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

The purpose of this document is to set out the policy and code of practice governing the management and commercial exploitation of the University's Intellectual Property ("IP") and the use by the University of IP owned by others ("Third Party IP").

Intellectual Property refers to creations of the mind; for example, research results, inventions, literary and artistic works, software, designs, etc. Like other forms of property, IP is an asset which has value and can be traded; it can be bought, sold and licensed.

Legal protection for Intellectual Property in the UK and elsewhere in the world is provided by legal rights, which are known as Intellectual Property Rights ("IPR").

This Code of Practice applies to all forms of legally recognised IP that are created or devised in the course of employment of University staff (i.e. any employees of the University), or study by students, or in the course of contractual relationships (to the extent it is agreed that this Code applies in the contract in question), and this Code also applies to any other IPR assigned to or owned by the University or to which the University is entitled (except to the extent the University has agreed otherwise).

This Code of Practice will be managed by Research and Enterprise and approved by Council.

The University, as owner of the intellectual property of its employees, reserves at all times the right to modify this Code of Practice and the accompanying Guide at its discretion. It will in any event be subject to periodic revision in consultation with the appropriate University bodies.

This version of the Code of Practice (version 2.0) shall take effect from 5 July 2010 (the *Effective Date*) in place of and superseding all previous versions of the Code.

This document should be read in conjunction with "The University of Reading Copyright Policy", and the current version of "The Guide to the Commercialisation of Intellectual Property".

Revision History

Version	Author	Date	Comments
1.0	Sue O'Hare	7 April 2005	Approved by Council 18 March 2005 and issued
1.1	Sue O'Hare	30 March 2007	Revenue and equity sharing sections redrafted by Blake Lapthorn Tarlo Lyons to accommodate the strategic partnership with ANGLE plc. Approved by Council 23 March 2007 and issued with effect as of that date.
1.2	Liz Kirby	17 December 2008	Revenue and equity sharing sections

1. **Preamble**

The University is committed to the widespread dissemination and use of the results of its research and other activities, which generate Intellectual Property, through both publication and commercial exploitation as appropriate. Intellectual Property is an asset that may have commercial value. The University has a responsibility to ensure that IP is managed effectively for the benefit of the University as a whole, the creators of the IP and its funders, and to respect the rights of third parties when using third party IP.

2. **Objectives**

The purpose of this document is to set out the policy and code of practice governing the management and commercial exploitation of the University's intellectual property, and the use of third party IP in order to:

- clarify:
    - ownership criteria for IP
    - rights and obligations of all parties
    - roles and responsibilities in relation to the management and use of IP
    - the use of third party IP, so as to avoid infringing the rights of others

- specify:
    - the code of practice when dealing with IP
    - distribution of revenue or equity resulting from IP commercialisation

3. **Policy Statement**

It is the policy of the University that:

3.1. The product of work carried out with the benefit of the University environment, which

4. Scope & Coverage

This Code of Practice is concerned with the management and use of IP owned by, and/or created within the University, be it in research, teaching, commercialisation or other activities. It is also concerned with the use of third party IP, to ensure freedom of use for the University's activities. The policy statements are above. This Code of Practice is designed to implement these policy statements.

4.1 This Code of Practice covers all IP owned or managed by the University, where

4.1.1 the IP has been created by a person as part of their employment by the University in circumstances where the law presumes ownership to the employer, or the ownership has been assigned as part of the employment

5.3 The University grants the Author(s) of the material a free, non-assignable and non-sublicensable right to use and copy the copyright works mentioned in Clause 5.2.1, 5.2.2 and 5.2.6 for their own academic purposes, but not in any way for commercial purposes unless otherwise agreed by the University.

5.4 Where copyright belongs to the University, staff should confirm the fact by inserting the following copyright notice on all material: "© University of Reading 20[xx]. All rights reserved."

Students

5.5 Legislation states that as a general rule employers own IP created by their employees in the normal course of their employment. As students are not employees, the University does not automatically own student IP.

5.6 A student may choose to assign their IP to the University, or the University may require a student to assign their IP in certain circumstances (see Clause 5.7). By doing so, the student will be treated on the same basis as staff and benefit from the support provided by the University for the management and commercialisation of the IP, including financial support. This may include costs related to filing and maintaining patents; costs associated with IP, technology and market assessment; legal costs; access to specialists in fund raising and commercialisation via licensing or start-up companies. In addition, the student will be eligible to participate in any revenue or reward sharing should the IP be successfully commercialised (see Clause 11 and Annex 1).

5.7 There are circumstances where the University will require a student to assign their IP to the University before, during or after their course of studies. These include the following:

5.7.1 A project which is funded by a third party under a grant or contract, or is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation that affects ownership of the intellectual property. The terms of the grant or contract between the University and the funding body, or other agreement, will determine ownership of the IP and in some cases the student will be required to provide an undertaking to assign their IP to the University (or possibly the funding body).

5.7.2 A student working in collaboration with University staff where the IP generated by the student is needed to enable the use of the entire technology.

5.7.3 A student working under supervision from University staff where the IP has been generated with a significant contribution from their supervisor or other member of staff, such that the member of staff is a joint or co-inventor or co-owner of the IP.

5.7.4 The student has received significant financial support or material contribution from the University (for example a stipend or fees waiver, including those directly from a School or unit) to undertake the research.

5.8 When the circumstances in Clause 5.7 do not apply, but the student wishes to work with the University to exploit their IP, they may offer it for assignment to the University. If the University agrees to the assignment, the student will be treated on the same basis as staff with respect to support services and revenue sharing.

5.9 To assign IP to the University the student will be required to complete an Assignment Agreement and abide by the procedures and accept the obligations in this Code of Practice.

5.10 Students who assign their IP to the University will be treated for ownership and reward purposes as though they were staff of the University and thus benefit from input of

Teaching and Learning Materials

Teaching and Learning Materials now include many different forms of Intellectual Property and Intellectual Property Rights. As well as traditional paper based material, Teaching and Learning Materials include digital media, web based content, broadcasts, video and audio materials and software. As well as copyright in printed materials and software, IP Rights can also include performing rights, design rights, database rights, trademarks, etc. Moral rights for the creator of the material also exist for the copyright materials.

7.1 In accordance with Clause 5.1, the University owns all Teaching and Learning Materials, other than those in clause 7.5, that:

7.1.1 are developed by staff in the normal course of their duties while employed by the University; or

7.1.2 are otherwise created in the course of their employment, which shall be deemed to include in addition any Teaching and Learning Materials which:

7.1.3 use significant University resources in their development such as multi-media materials, visuals or slide shows; video and audio material; presentations streamed or made downloadable over the intranet or Internet; or

7.1.4 are specifically commissioned by the University from a member of staff (requested by a line manager – normally in writing), whether in return for a special payment or not; or

download from the Internet, to ensure that it is covered by an appropriate licence agreement. This licence would normally restrict the use to research, teaching or evaluation purposes, but not commercial use. Contact the Academic Legal Services team in Research and Enterprise for more information and guidance.

Databases

7.13 In accordance with Clause 5.1, the University owns databases that are developed by staff in the normal course of their duties or otherwise in the course of their employment. The University also asserts ownership of all databases that are the subject of any contract whereby ownership is with the University, or that are developed by a student in the circumstances specified in clause 5.7.

7.14 A database may be protected both as copyright and under the database right.

7.15 The Copyright, Designs and Patent Act 1988, defines a database as:

"a collection of independent works, data or other materials which –
(a) are arranged in a systematic or methodical way, and
(b) are individually accessible by electronic or other means."

Since this covers all types of works, a multi-media work as a whole may be protected as a database if the component parts can be accessed individually. However, it does not include a computer program used in making or operating databases.

Materials

7.16 The use of proprietary tangible property for research purposes, often-biological material, either owned by a third party and transferred to the University, or owned by the University and transferred to a third party, should be the subject of a Material Transfer Agreement or Collaboration Agreement, which should include agreed terms on publication rights, ownership, management and commercialisation of new inventions arising from the use of the materials.

Theses and Dissertations

7.17 The University does not claim copyright in theses or dissertations; this copyright shall belong to the Author.

7.18 For the avoidance of doubt, the ownership of other IP rights in the underlying research reported on in the thesis remains with the University if the Author has made an assignment under clause 5.7, 5.8, 5.16, or 5.17, or is an employee of the University.

7.19 The Author grants the University a free, unconditional, irrevocable and perpetual, transferable non-exclusive licence to make available, use and copy the thesis or dissertation for academic and administrative purposes; the licence will remain in effect in the event that the Author leaves the University. The University requires a copy of the

thesis to be deposited in the University and the British Libraries, for further information a student should contact the Examinations Office.

7.20 Where a patent application is being contemplated on an invention disclosed in a thesis,

9. Using IP Belonging to a Third Party

It is essential that the University does not infringe Intellectual Property Rights which belong to third parties. This may include background IP used in a research project, IP generated at the University but owned by a third party, or IP owned by the University but licensed to a third party under terms which might restrict further use. Whilst in many cases research or teaching use is permitted by law, if third party IP is to be used, then care must be taken that appropriate permission or rights exists for the intended use and if not approval should be sought from the owner for the envisaged use. Contact the Academic Legal ServicesTeam in Research and Enterprise for advice.

9.1 Staff and students intending to use any material provided by or owned by third parties must ensure that they and the University are authorised to do so. Anyone in doubt should contact the Academic Legal Services Team in Research and Enterprise.

9.2 When bringing materials into the University from a previous employer, for example Teaching and Learning Materials or software codes, care should be taken to ensure the appropriate rights to use them in the University have been obtained.

9.3 Particular care should be taken when downloading material from web sites, since using such material may amount to copyright infringement. Staff and students are referred to the “Rules for the Use of University Computers and Data Networks” for further guidance.

9.4 If software code or applications are downloaded, the terms of the licence agreement must be adhered to, for example software on an educational only licence must not be used for commercial purposes, and care taken to ensure its use does not compromise the use or commercialisation of research results which incorporate the code or are based on it. For further guidance contact the Academic Legal Services Team in Research and Enterprise. Employees should note that they do not have the authority to bind the University to an agreement unless expressly given that authority.

9.5 The law concerning database rights allows the copying of insubstantial parts of a database for any purpose and databases can also be copied for the purpose of non-commercial research or private study, to the extent permitted by statute. Care should be taken to ensure that any use that is made of third party databases is done either with permission from the rights holder, or within the parameters of what is legally permissible, taking into account the terms of any licence.

9.6 When a staff member receives confidential information from a third party in the course

10.2. Know-how is a valuable asset, which may be transferred into and out of the University under confidentiality agreements or though consultancy. Care should be taken to ensure any use of third party know-how is not subject to any confidentiality or use restrictions, and that the transfer of any valuable confidential University Know-How is covered by an appropriate confidentiality agreement.

10.3. The University's policy is to support the academic dissemination of research results and encourage the publication of scholarly and scientific works. However, in the case of technical inventions (including some computer enabled inventions) which may be patentable, premature public disclosure, including verbal disclosure, prior to the filing of a patent application may be an obstacle to patentability and adversely affect the commercial value of the invention. All those bound by this Code of Practice should, where commercialisation may be possible, contact Academic Legal Services in Research and Enterprise and ensure that research results are kept confidential until an assessment is made of patentability and commercial potential.

10.4. During discussions with third parties, which may lead to research collaboration and/or to a commercial arrangement for Intellectual Property, it may be necessary for the University to disclose confidential and valuable information to a third party, and vice versa. This is especially true when negotiating commercial terms for an exploitable

11.2.2. Teaching and Learning Materials are developed using significant University resources; OR

11.2.3.

13.2.1. any potentially commercialisable IP arising from their work

13.2.2. the ownership by a third party of any IP required for commercialisation of their work

Securing IP rights

13.3. All persons bound by this Code of Practice must co-operate with Research and Enterprise to ensure that:

13.3.1. terms concerning IP issues are agreed and made clear in any bid or proposal or collaboration document prior to the commencement of the work or before the start of any collaboration with third parties (including students, visiting academics, other universities and companies);

13.3.2. the University procures from a third party owner or controller of any IP to be used for work in the University an appropriate licence, assignment or consent for the University's use of the IP at the outset of the work;

13.3.3. no work is conducted for the benefit of or using material owned by a third party before the terms of ownership, access and use of project/work outcome are agreed; and

13.3.4. that the University's ownership is asserted in relation to trademarks, or its copyright interest in paper or electronic materials, by incorporating the appropriate copyright notice (see Clause 5.4) or Trademark symbol.

Notification of infringement

13.4. Any person bound by this Code of Practice must alert the Academic Legal Services Team in Research and Enterprise immediately on suspecting or becoming aware of an infringement of IP rights being either

13.4.1. infringement of IP rights owned by the University or

13.4.2. the University's infringement of IP rights owned by a third party

14. <u>On Leaving the University</u>

14.1. Persons bound by this Code should continue to acknowledge and attribute the University's IP rights, which were created during the period of their employment, study or under other contractual agreements at the University, in a clear manner and to avoid misleading future employers or collaborators or other third parties regarding the IP concerned.

14.2. Cessation of employment, under normal circumstances, will not affect an individual's right to receive a share of income.

14.3. Staff should consult the Academic Legal Services Team in Research and Enterprise to ensure they have the necessary rights to continue to use any IP they have contributed

to developing, for example Teaching and Learning Materials, once they have left the University. Such rights will not be unreasonably withheld by the University.

15. Death

15.1. In the case of the death of an individual who is due a share of income, that share of any income will be payable to the estate of the deceased.

16. Dispute Resolution

16.5 Where the University is not directly a Party to the Dispute the Director and/or his/her Authorised Representative(s) and the Pro-Vice Chancellor and/or his/her Authorised Representative(s) as appropriate under clauses 16.3 and 16.4 respectively shall act as a facilitator in relation to the Dispute. If a resolution is reached, the Parties shall agree a written note of its terms, which will be signed by all Parties and the Director and/or his/her Authorised Representative(s) and/or the Pro-Vice Chancellor and/or his/her Authorised Representative(s) as appropriate. The resolution shall be binding on all Parties.

16.6 The University and/or the Director and/or his/her Authorised Representative(s) and the Pro-Vice Chancellor and/or his/her Authorised Representative(s) as appropriate under clauses 16.3 and 16.4 respectively when acting as a facilitator shall not be liable to the Parties for any act or omission in such capacity unless the act or omission is proved to have been fraudulent or involved wilful misconduct.

16.7 Unless otherwise agreed between the Parties and the Director or the Pro-Vice Chancellor, as appropriate, the meetings referred to in clauses 16.2 to 16.5 shall be held within the University grounds and shall be conducted in English. The meetings shall be conducted on a without prejudice basis and shall be confidential to the Parties.

Mediation

16.8 If the Parties are still unable to resolve the Dispute, any Party and, if it is not a Party, the University is entitled to request that the Pro-Vice Chancellor refers the Dispute for mediation to the Cllal inEsyEffpective DisputeRresolution("CEDR"s) tob(e)-6( )]TJ0.000
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16.10 If a resolution is reached, the Parties shall agree a written note of its terms, which will be signed by all Parties and the Mediator. The resolution shall be binding on all Parties and, if it is not a Party, a copy shall be provided to the University.

16.11 If in the opinion of the Mediator a resolution of the Dispute can not be arrived at within a reasonable amount of time and in any event within **[5]** working days of the conclusion of the meeting (unless the Parties and the Mediator agree to a longer period) the Mediator will declare the mediation at an end.

16.12 The Parties and the Authorised Representative(s) shall keep confidential to themselves and their professional advisors the existence and details of any proceedings pursuant to this clause 16 save to the extent such information is in the public domain (other than as a result of a breach of this clause 16) or to the extent disclosure is required by law or as is reasonably necessary to protect or pursue a legal right or remedy.

Arbitration

16.13 In the event that the parties are unable to resolve the Dispute within **[10]** business days of the mediation coming to an end (or any extension of time agreed in writing for further negotiations) the Dispute shall be referred by any Party, and, if it is not a Party, the University shall be entitled to refer the Dispute, by notice in writing to, and to be finally resolved by, arbitration in accordance with the Rules of the London Court of International Arbitration ("LCIA") from time to time in force, which rules are deemed to be incorporated by reference into this clause. The seat, or legal place of arbitration shall be Reading. There shall be a sole arbitrator. The language used in the arbitration shall be English and the governing law shall be the substantive law of England and Wales.

16.14 The arbitrator shall be a senior barrister of at least 10 years call in private practice in barristers' Chambers in London specialising in English intellectual property and patent law ("the Arbitrator"). The Parties shall attempt to agree the identity of the Arbitrator between them. If the Parties fail to agree the identity of the Arbitrator within [**10]** business days (or any extension agreed in writing) any Party and, if it is not a Party, the University may request that the Arbitrator be appointed by the LCIA.

Applicable Law

16.15 This Code of Practice is governed by the law of England and Wales.

16.16 Nothing in this clause 16 shall prohibit a Party from making an application to any Court of competent jurisdiction for the purpose only of seeking interim relief to protect any Intellectual Property Right or obligation of confidence. Any such application will not constitute a breach or waiver of this clause 16.

A.5. Any dispute relating to the treatment of any expenditure shall be referred for resolution in accordance with the Code of Practice, clause 16.

A.6. The standard arrangements for distribution of Net Revenue are as follows:

A.6.1. Net Revenues will be shared between University central funds, the Creator(s)

A.9. A Creator entitled to receive a share of the Net Revenues from commercialised IP in accordance with the above scale will continue to receive his/her share if he/she leaves the University until the Net Revenues cease. In the event that the Creator dies, the estate of the deceased will continue to receive his/her share.

A.10. The Finance and Corporate Services Directorate will be responsible for distributing any Net Revenues in a timely manner.

3. Distribution of shares (equity)

A.11. This section 3 (clauses A.12 to A.15) sets out the standard arrangements for the distribution of shares arising from University IP commercialisation in a spin-out company.

A.12. Where University IP is commercialised using a spin-out company, the Creator(s) will receive their share of the benefits as equity and not cash and the provisions of this section 3 shall apply, notwithstanding any income or other cash receipts to which the University may in addition be entitled arising from the IP commercialisation.

A.13. The University acknowledges that special circumstances may arise in any particular commercialisation opportunity, which make modification of these arrangements necessary or desirable. In such a case, these arrangements would be subject to review and, where agreed with the University and the Creator(s), subject to modification.

A.14. The standard arrangement is as follows:

A.14.1.1. the Creator (or, if more than one, the Creators together) and the University shall share in the equity in equal proportions;

A.14.1.2. where more than one Creator has created the IP, the Creators, in consultation with, and with the assistance where required of, their respective Heads of School and, where relevant, the other investors in the spin-out company, will be responsible for determining and agreeing in writing as early as possible the split as between them of such equity share and shall notify the University's Academic Legal Services Team of such split;

A.14.1.3. the shares shall be distributed as follows (with the intent that the spin-out company does not fall to be treated as a subsidiary of the University):

Creator(s) **(to be allocated between them in accordance with clause A.14.1.2)**	**University**
50%	50%

A.14.1.4. In certain circumstances, third parties may become entitled to equity participation in the company, eg. as a result of awards or grants made under other funding sources or where IP is jointly owned with a third

party. In such circumstances, the percentages referred to above will be adjusted on a pro-rata basis based on the level of third party equity participation.

A.14.2. The University intends that the net sale proceeds (after recoupment of all University costs (including any applicable taxes)) from any future sale of the University's shares in any particular spin-out company and any dividends paid before sale would be divided equally between the University and the Creator(s)' School, but subject to an overall limit of £1,000,000 on the School's aggregate receipt (with any net sale proceeds (together with any dividends before sale) above such amount retained by University central funds).

4. **Deductible Costs**

A.15. Subject as provided in paragraph A.15.2 below, the following categories of cost shall be deducted from gross revenue for the purposes of clause A.3:

A.15.1.1. all expenses paid outside the University, including patent agent fees,

A.15.2. The following categories of cost shall not be deducted from gross revenue for the purposes of clause A.3:

A.15.2.1. any internal recharges for time spent by University staff unless a specific fee has been paid, or the time spent has been exceptional;

A.15.2.2. any departmental costs or charges relating to any use or provision of any equipment or facilities.

Annex 2

Definitions

Author(s)	means any person or persons who create a copyright work
Creator(s)	means an Author or Inventor, i.e. any person or persons who have created an item of copyright or other item of IP or who have contributed to an invention.
Effective Date	means the date this Code is stated to take effect.
Intellectual Property (IP)	refers to creations of the mind; for example, research results, inventions, literary and artistic works, software, designs, etc. Like other forms of property, IP has an owner, can be bought, sold and licensed/rented, and is protected by law. Protection is provided by statutory rights known as Intellectual Property Rights (IPR).
Intellectual Property Right (IPR)	refers to the legal rights which safeguard the rights of Intellectual Property owners and creators. There are many different IPR's, which apply to different forms of IP. Whilst there are some international agreements, IPR's are national or European rights, and some differences exist, and some countries have additional rights. Intellectual Property Rights in the UK include but are not limited to: • **Patents** protect inventions, each embodying a new idea capable of being made or used by industry and involving a non-obvious inventive step, e.g. devices, DNA sequences, new chemical entities, some computer programs. • **Plant Breeders' Rights** protect new varieties of plants or seeds, protected by • **Copyright** protects literary and artistic works, films, videos, records, broadcasts and typographical arrangements, including computer software, electronic materials and web pages. • **Registered Design Rights** protect designs and design drawings, mainly of aesthetic objects. • **Unregistered Design Rights** protect engineering components, architectural drawings, etc. • **Trade Marks** protect product brand names, company logos, etc. • **Database Rights** protect collections of independent works, data or other material in electronic or paper form.

- **Rights in** Know-How and other information, which include trade secrets and background techniques, usually created through confidentiality and other agreements.
- **Other Rights** may exist in different countries, for example, Utility Models or Petty Patents, and the details of some rights may differ between countries. Expert advice should always be sought from the IP Advisors in Research and Enterprise.

Inventor(s) means any person or persons who contributes to an invention, such as a technical invention, software, design, or other item which is novel or includes an inventive step.

Research & Enterprise means the department of the University containing Academic Legal Services, Research and Enterprise Development, Strategic Programmes and the Knowledge Transfer Partnership team, which is responsible for managing and commercialising the University's IP.

School means the School, Directorate, Self Financing Centre or unit to which an individual is assigned in accordance with his/her contract of employment or student registration.

staff means individuals who are employed by the University under a contract of employment whether fixed term or permanent, including but not limited to Academic and Research, Professional and Managerial, Academic and Administrative Support, and Ancillary and Operational Support job families.

student means any person registered as a full or part-time undergraduate, or taught or research postgraduate student of the University, or following any course as if such a student.

supervisor means a member of academic staff responsible for supervising, assisting, guiding, or in any other way monitoring a specified piece of academic or research work, including assessments, by a student.

Teaching and Learning Materials

material used for teaching and/or learning purposes including traditional paper based material and handouts, as well as presentations, slides, digital media, web based and electronic content, broadcasts, video and audio materials, and software.

Technology means a bundle of Intellectual Property, protected by various rights, which are commercialised together and are given a D0x-xxx number in the Academic Legal Services records; for example if several patents, copyright items and know-how are licensed together then they count as one Technology, or if the same (or

	similar) bundle of IP is licensed to several different parties (eg multiple non-exclusive licences, or licenses in different fields) then all those licences are also all attributed to one Technology.
third party	means an organisation or individual other than the University or an individual bound by the terms of this Code of Practice.
University means	The University of Reading.
University IP	means IP created by, or licensed to or by the University which it wishes to commercialise in collaboration with the Creator(s).