

Intellectual Property Policy

Introduction

Dublin City University (hereinafter referred to as the 'University' or 'DCU') through its role in teaching, research, innovation, enterprise and educational activities encourages and supports the creation of many forms of intellectual property. Intellectual property (IP) covers a wide range of creative work including copyright, know-how, registered designs, patents, trademarks, computer software and databases. The University is committed to ensuring that its research can be translated into outputs that help create social, cultural, economic and national policy impact. It is therefore important that a clear framework is in place to ensure that staff and students can contribute as effectively as possible to the dissemination of knowledge while complying with policies and contractual arrangements that govern state and externally funded research.

Purpose

The purpose of this policy is to set out the principles relating to the ownership and commercialisation of all intellectual property arising from teaching, research and other academic and support activity undertaken in the University. It sets out incentives to encourage the creation of commercially useful intellectual property and allows the creators to benefit from any commercialisation activity.

Scope

- 1) This policy applies to all staff of the University in both academic and professional support units including its research centres. It also applies to campus companies in which DCU Commercial DAC has a controlling interest.
- 2) This policy shall apply to all registered students.
- 3) This policy shall apply to all others conducting research in DCU (including visiting researchers, and those with Emeritus or Adjunct appointments) except where there is a written agreement to the contrary.

Policy Statement

1) Intellectual property ownership

Generally, under Irish employment law, intellectual property created by employees is owned by the employer. In certain cases intellectual property may be jointly owned by the University and a sponsoring company, body, agency or other academic institution. In these cases the contractual terms and conditions of the research contract will set out the ownership terms along with associated responsibilities and benefits.

The University does not claim ownership of Intellectual Property created solely by undergraduate students. Where a student works on a research project as part of their course of study that involves industry parties or because of other contractual conditions they may be required to assign their intellectual property rights to the University, in which case the student will then be treated as a potential beneficiary of any future commercialisation income as per the provisions of section 12.

The extent of University interest, if any, in intellectual property developed by students will be determined by reference to contractual arrangements with sponsoring agencies the terms of which will take precedence

2) Ownership of copyright and related rights

Under the terms of the Copyright and Related Rights Acts 2000 to 2007 the University owns all copyright in works created by its employees in the course of their employment, irrespective of the format in which the material is created, stored and made available.

The University waives its right to ownership of copyright in, artistic, literary, photographic, video, musical, historical, cultural and scholarly works provided the material has not been produced under a contract between the University and an external sponsor.

Examples of situations where this waiver does not apply are:

- (i) works including photographic and videographic works commissioned by the University;
- (ii) copyright protected intellectual property arising from research such as laboratory notebooks, software or other supporting material including drawings associated with the filing of patents or other forms of registered intellectual property;
- (iii) teaching and learning materials or aids specifically produced or commissioned as part of the duties of a member of staff;
- (iv) promotional material and corporate presentations, slides and posters.

3) Ownership of scholarly literary cultural and artistic works

In keeping with long standing academic tradition the University does not assert ownership of intellectual property rights in literary works, historical works, musical works and other artistic works, scholarly publications or text books created by members of staff, irrespective of the form in which the work is stored and made available, provided that the work was not commissioned by the University and was not funded by a contract between DCU and an external party. The University shall be automatically entitled to a perpetual royalty free non-exclusive worldwide licence to use the intellectual property rights arising from such works in teaching and research and in support of all its academic activities as a condition of this waiver.

4) Visiting Researchers

The University shall own the Intellectual Property created by researchers visiting DCU (including those with Emeritus or Adjunct appointments) who carry out research in DCU where intellectual property is created by them in collaboration with University employees and where more than incidental use of University resources occurs. In such cases a specific written agreement shall be put in place to ensure that there is fair and equitable treatment of intellectual property ownership and access rights to such intellectual property.

5) Externally Hosted Staff or Students

University staff and registered students who spend time at institutions outside of DCU shall continue to be bound by this policy and shall not enter into any intellectual property agreements with the host institution except through a formal written agreement between the University and the host institution.

6) Ownership of teaching materials, aids, and performers' rights

Where teaching and learning materials have been made formally available to students through lectures and an on-line platform or other means, each staff member grants to the University an irrevocable worldwide royalty free right in perpetuity to use such materials in delivering its programmes of study.

The University shall, where practicable, endeavour to acknowledge the original creator of any teaching materials except in the case of multiple revisions of course material it shall not be obliged to give credit. [Such acknowledgment and credit will not be attributed in those cases where the materials were created as a result of a contract of employment or specified duties relating to the development of on-line courses].

The University retains the ownership of, and copyright in, the overall description of the elements or modules of any academic courses delivered by a staff member during their time of employment.

An academic staff member who leaves the employment of the University will retain ownership of copyright in their scholarly, creative and cultural works, subject to the retention by the University of a perpetual royalty free worldwide non-exclusive right to use for teaching and research purposes.

The University agrees and acknowledges that all Performers' Rights in any teaching materials such as video or other recording of lectures, demonstrations or public talks or similar works that are performances in intellectual property terms are owned by the staff member, except where the staff member was directly employed to create and develop such material under a contract of employment or arising from an externally funded grant or contract between the University and a third party. Each staff member grants to the University, and to its subsidiaries, an irrevocable royalty free non-exclusive worldwide licence in perpetuity to use and sub-license such material for teaching, research and commercial purposes, including the right to sub-license any subsidiary companies of the University and third parties. Any income received, after deduction of all directly attributable expenses, through commercialising the work will be distributed in accordance with the revenue sharing table as set out in section twelve below of this policy.

7) Publication of research results

In support of the University's ambition to maximise visibility, availability, and impact of its research output DCU commits itself to the principles of open access (as outlined in the 'Budapest Open Access Initiative': <http://www.budapestopenaccessinitiative.org/read>). A further consideration is that the majority of key Irish, European, and international funders now require open access to research findings as a condition of grant funding.

To this end, DCU strongly encourages all staff to deposit all journal articles, conference items, books, and book chapters into DCU's institutional repository 'DORAS' (<http://doras.dcu.ie>). Open access to the full text item will be within the confines of any copyright transfer agreement, and publisher's licensing and policies must be respected (full copyright policy checking will be carried out by DORAS staff). Also, bearing in mind that premature publication of the details of a potentially patentable invention in a thesis or other publicly accessible non-confidential format may make it impossible to seek patent protection, full text embargoes will be applied where necessary. This is in accordance with the principle of 'Immediate Deposit, Delayed Access'.

In certain cases publication prior to patenting or other forms of intellectual property registration may require the consent of a funding agency or industrial sponsor, if applicable. Staff members are obliged to respect the confidentiality provisions of collaborative or sponsored research agreements with such agencies / sponsors.

8) Disclosure of inventions and other intellectual property

To ensure compliance with the National IP Protocol (2016) governing the exploitation and licensing of state funded research, and also compliance with funding agency contract terms and conditions, teaching staff and researchers are required to promptly disclose and document any invention or body of intellectual property as soon as possible to allow the University the opportunity to seek patent protection or other form of formal rights registration if it considers that there is a reasonable commercial case to do so. In some cases industrial research collaborators or sponsors may need to be consulted through Invent and they may have rights to determine a patenting strategy under the terms of any relevant research contract. Premature publication of externally funded research outcomes, whether through a thesis or poster or otherwise, relating to potentially patentable results must not occur without the written consent of Invent as it may represent a breach of confidentiality with a research partner or funding agency and may destroy novelty which may then limit, or otherwise compromise, patentability.

9) Assignment of intellectual property

With the exceptions, as previously set out, for the ownership of copyright in scholarly, musical works, cultural works and text books a University employee shall agree to assign to the University any and all intellectual property, whether suitable for formal registration of rights or not, made while carrying out duties arising directly or indirectly from that employee's role at the University. In addition, all employees shall agree to execute such documents of assignment at the time a patent application or other formal intellectual property registration right is made and to do everything that may be reasonably necessary, at the University's cost, to assist all assignees to obtain, maintain and protect patent rights.

10) Consultancy and intellectual property conflicts

A University staff member who, with the appropriate consent, is engaged in consultancy work or who is involved in a spin-out company, should ensure that the intellectual property terms and conditions in a consulting agreement or other relationship with the company are not in conflict with the University's intellectual property ownership rights. It is the responsibility of an individual staff member to ensure that any arrangements made personally with external bodies do not conflict with their intellectual property obligations to the University and they must seek written permission from the Head of School and the Vice President for Research and Innovation where a perceived or actual conflict of interest around intellectual property could arise. The Consultancy Policy for Dublin City University requires that appropriate internal written consent should be sought.

11) Development and commercialisation of intellectual property

Invent will review invention disclosures and software disclosures in consultation with the researchers involved and will assess whether there is potential to license the technology or invention to a third party. Alternatively, there may be an opportunity to work with the researchers and external entrepreneurs to develop an investment ready business plan for a spin-out company. If the research is considered very early stage a strategy to secure further research funding will be considered by Invent and by the Research and Innovation Support Office. Further information on the licensing and commercialisation process will be provided in the Commercialisation Handbook published by Invent.

12) Sharing of licensing and commercialisation income

The University is committed to supporting the adoption and use of discoveries and inventions as widely as possible for societal and economic benefit. The policies and principles of the National Intellectual Property Protocol (2016) governing state-funded research in Ireland will be applied to ensure that as much social and economic impact is achieved, where possible, in Ireland. The national policy encourages the sharing of net income with inventors. Any net revenue actually received by the University after the deduction of patenting, legal, commercialisation and any other direct costs, including professional costs, shall be shared with inventors, the University and the Faculty according to the table below which may be revised at the discretion of the University from time to time.

The right to share in net commercialisation income shall extend to employees and students who originally assigned their intellectual property to the University and who were directly involved in the actual creation of the intellectual property. Where the individuals involved have left the

University the right to receive a share of net commercialisation income shall continue to apply, subject to compliance with all applicable tax regulations. In the absence of signed written agreement between the IP creators confirming the individual percentage contribution to the licensed intellectual property any distribution by the University shall be entirely discretionary.

The table below sets out the distribution of net commercialisation income from licensing arrangements.

Table – Distribution of net commercialisation income

Income Range	Inventors/Creators of IP	University	Faculty
0-€50,000	75%	15%	10%
€50,001 - €150,000	50%	30%	20%
€150,001 +	33.3%	33.3%	33.3%

The amount of net income to be distributed to inventors or creators of IP may be revised at the discretion of the University on a case by case basis through written agreement authorised by the board of Invent at the time of formation of any spin-out company. This may be required to ensure equitable treatment for participating and non-participating inventors or IP creators and other direct contributors to the commercialisation and development work leading to the creation of a spin-out company or a licence. If the University receives income from equity that was granted in lieu of up-front payments provided for in the licence then only royalty income actually received will be subject to the distribution and the University shall retain any capital gain from the disposal of equity. In a case where the University invests cash or provides access to facilities or other services to an agreed value to acquire a shareholding in a spin-out company then any proceeds of such shareholding shall not be subject to the distribution policy. The share of income to be distributed to the faculty shall be determined by the University. All payments shall be subject to compliance with applicable taxation provisions as required by law at the time of distribution.

13) University share in spin-out companies

- a) The University shall actively encourage the formation of viable research based spin-out companies to further develop and commercialise University owned intellectual property. In recognition of the support of the University in terms of research, facilities, the payment of staff salaries, and the protection of intellectual property, the University through Invent shall be granted an equity stake of at least 15% in a company that has been adequately funded by external investors to implement a viable business plan to be approved on behalf of the University by the Board of Invent DCU DAC.

Where the University directly assists in:

- the development of the business plan; or
- the raising of investment capital; or
- negotiations with prospective clients; or
- provision of space and facilities and access to infrastructure; or
- the direct funding of the project leading to the spin-out opportunity,

then a higher equity stake may be negotiated on a case by case basis taking account of the investment by the University and its continuing support for research relevant to the project.

The University shall not be obliged to share any net revenue received from any equity holding or royalty with University staff members or researchers who have at the time of establishment a personal equity interest, either directly or indirectly, in the same spin-out company.

- b) Written approval for the involvement of staff members and their time commitment in spin-out companies, whether as directors, scientific advisors, or in any other capacity, shall be sought from the Dean of the Faculty and the Vice President for Research and Innovation. The University Conflict of Interest Policy shall apply with respect to any research relationship between a spin-out company and the University, and this shall be formalised through a written research contract with the University with the appropriate intellectual property provisions.
- c) The University shall be granted a reduced equity stake of 5% in a company that has been adequately funded by external investors when all of the following conditions are met:
 - i) when the spin-out company is based primarily on unpatented, unproven computer software, know-how or source code that is licensed by the University to the spin-out company; and
 - ii) when the spin-out company is formed by departing research staff or researchers or students who do not wish to avail of any University laboratory facilities, research expertise or resources; and
 - iii) if there are no other inventors or researchers apart from the founders who contributed to the intellectual property; and
 - iv) where full and complete disclosure of all intellectual property proposed to be used by the company, such as computer software and supporting documentation, has been made to Invent; and
 - v) where the University has no continuing obligations or existing liabilities to any third party owners of intellectual property or funders of the related research that led to the creation of the software.

In the case of university staff on formal leave of absence or sabbatical who are involved with the company the minimum 15% equity provision shall apply.

- d) The University shall have the right to appoint a director or an observer to the board of the spin-out company for as long as it holds an equity stake of 5% or more. The shareholders' agreement between the founding shareholders will set out the reporting obligations between the company and the University and the restrictions, if required, on the use of new intellectual property created by University staff or researchers associated with the company.
- e) University staff or researchers must disclose to Invent any invention disclosures, proposed patent filings or registered design applications by a spin-out company from the University that includes them as inventors, and must secure written consent to such filings to ensure continuing compliance with contractual terms and conditions with the research funders.

Failure to do so could compromise both the company's and the University's rights under patent law.

- f) All relevant intellectual property shall be licensed to a spin-out company on arm's length terms in compliance with the National IP Protocol (2016) and in compliance with EU State Aid Rules. Further details of procedures for the approval and licensing of intellectual property to spin-out companies shall be made available on the Invent web site. In all cases the University shall have no obligation to share any commercialisation income received with the departing founders who at the time of leaving the university had equity in the company.

14) Special Circumstances

From time to time special circumstances may arise in connection with intellectual property created by staff who, are either employed part time by the University, or by new full time staff who have pre-existing rights, that may conflict with the general University Intellectual Property Policy. Such cases may be referred to the Vice President for Research and Innovation who, in consultation with the Director of Innovation, the Director of Human Resources and the Dean of the relevant faculty, will make a recommendation to Executive.

Roles and Responsibilities

Director of Innovation

The Director of Innovation, in consultation with the Director of Research Support and the Vice President for Research and Innovation is operationally responsible for ensuring that research contracts and licensing arrangements by the University and to the University comply with this policy. The Director of Innovation is responsible for the evaluation of business plans for spin-out companies and for the presentation of any case to the Board of Invent DCU DAC. The Director of Innovation is responsible for ensuring that Invent is adequately resourced to devise and deliver intellectual property awareness programmes and induction courses for all new staff through the University's human resources department including postdoctoral researchers and in consultation with the Dean of Graduate studies to ensure that all research students are aware of the university's intellectual property policy and procedures.

Members of Staff and Researchers

Except as provided for in both the University's Consultancy Policy and its Signing Authority Policy, members of staff and researchers may not sign or agree to any contract involving licences to, or for, intellectual property rights.

Examples of such contracts include, but are not limited to, the following:

- Research Contracts
- Non-Disclosure Agreements;
- Material Transfer Agreements;
- Open Source Licences;
- Innovation Vouchers; and
- Agreements concerning the donation of research equipment.

Research related contracts and agreements involving intellectual property rights may only be signed by the Vice President for Research and Innovation or the Director of Innovation or the Director of Research Support.

Members of staff and researchers must observe the copyright, intellectual property and data protection rights of others in both the preparation and publication of teaching and research materials and results, including the use of image databases and open source software. Advice should also be sought from Invent before accepting any terms for the licensing of such material and before using it with intellectual property created at the University.

Members of staff must not bring to, or use in the course of their employment with, the University any trade secrets or confidential information belonging to a previous employer or any other third party.

Members of staff may have access to and be entrusted with information in respect of intellectual property of the business of companies dealing with the University and may become aware of a company's dealings, transactions and affairs all of which information must be treated as confidential and not revealed to third parties.

Related Documentation

The documents listed below are of relevance to this policy.

- 1) **Consultancy Policy for Dublin City University** –
www4.dcu.ie/research/research_policies/consultancy_policy.shtml
- 2) **Conflict of Interest Policy and Guidelines** –
www.dcu.ie/sites/default/files/president/pdfs/conflict_guidelines.pdf
- 3) **Signing Authority Policy for DCU** –
www4.dcu.ie/sites/default/files/policy/Signing%20Authority%20Policy%20-%20Final%2017.11.15.pdf
- 4) **Spin-out Company Formation Guidelines** –
https://www4.dcu.ie/invent/campus_companies.shtml
- 5) **DCU Commercialisation Handbook** -
https://www.dcu.ie/user/login?destination=/invent/intro_ip.shtml

Contact Details

Further clarification of this policy can be obtained from the Office of Research and Innovation Support and Invent. The Director of Innovation can assist with enquiries relating to research based intellectual property contracts, licences, spin-out companies and material transfer agreements. Enquiries relating to teaching materials should be addressed to the Head of School. Staff members should contact the library for open access or publication matters.

Policy Review

The Vice President for Research and Innovation shall be responsible for the implementation and review of this policy. Regulations and procedures associated with intellectual property matters will be published by Invent from time to time. This policy shall be formally reviewed and, if necessary revised, in the context of DCU Incorporation during the first academic year after the Incorporation. The policy shall then be reviewed, and if necessary revised, not later than the third anniversary of the formal approval date of this policy by the University.

Version Control

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End.