

London School of Hygiene & Tropical Medicine: Intellectual Property Policy



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LONDON SCHOOL OF HYGIENE & TROPICAL MEDICINE: STATEMENT OF PRINCIPLE

The School is committed to freedom of intellectual expression and therefore it affirms the right of the academic staff to submit for publication their research publications, books, presentations and other scholarly works, following suitable consideration on the part of the academic staff of the intellectual property implications to the School of such publication.

London School of Hygiene & Tropical Medicine: Intellectual Property Policy

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Part One: The Basic Law & School Policy

Introduction

Intellectual property (**'IP'**) is an intangible asset whose broadest scope covers all types of knowledge, but which is generally focused on patents, know how, copyright, trademarks, brand names, designs & secrets. IP has become increasingly important to individuals, universities and companies in recent decades, in particular as a means of raising income and of exerting control over how the IP is used. Most forms of IP can be protected legally (with the exception of know how and secrets) and the resulting proprietary rights are referred to as IP rights (**'IPRs'**).

The transfer of IPRs, and knowledge more generally, has become an important issue for the government. Current economic doctrine states that successful knowledge transfer will increase economic activity and inward investment in the UK economy helping to transform the UK into a 'knowledge-based economy' competitive on the global stage. Various government initiatives therefore exist to encourage the transfer of knowledge from the university sector to third parties, in particular to industry and the wider community.

In order to effectively and equitably manage IP within a suitable knowledge transfer matrix the School requires consistent and transparent guidelines for itself and its staff. Part One of this document describes the basic law and set out policy guidelines for the School focused on patents and copyright, the two forms of IP most frequently encountered in a university setting. Parts Two and Three of this document consider the practical application of these guidelines, for copyright and patents respectively, in the School.

Issues involving IP, knowledge transfer and commercial liaisons are dealt with by the School's Business Development Officer, Dr. Sean Jauss. Further

details of his role are available on the School intranet at:

<http://intra.lshtm.ac.uk/businessdev/>

Basic Copyright Law

Copyright does not protect an idea only the form of its expression. The Copyright, Designs and Patents Act 1988 describes what can be copyrighted, what constitutes an infringing act, ownership and duration of the right.

1. An Automatic Right

Copyright covers the 'form' of the intellectual activity expressed in writing, pictures, photographs, music etc by an author in any physical manifestation. Software source code is also copyrighted. There is no quality or merit standard that needs to be achieved: a shopping list is just as valid a copyright as a novel. The copyright arises automatically the moment the work is fixed in any material form. The copyright does not need to be formally registered, though it can be helpful to use the © to indicate ownership.

2. Monopoly Right

Copyright creates a legal monopoly in favour of the owner which allows the owner to exert control over the copying, issuing and publishing of their work. **The author is not necessarily the owner.**

3. Ownership

Copyright is owned by the author UNLESS the author creates the work in the 'course of their employment' in which case the employer, subject to an agreement to the contrary (most commonly an agreement with a third party, for example, a funding body or industrial sponsor), owns the work. The owner of the copyright can: (a) copy, publish or issue their work; (b) sell, transfer or assign the copyright in their work; or (c) license the right to use their copyright to a third party.

4. Moral Rights

Regardless of who owns the copyright the author will retain certain moral rights in the work UNLESS they have expressly waived such rights. There are four moral rights: (a) the right to be identified as the author ('paternity right'); (b) the right to object to derogatory treatment of the work ('integrity right'); (c) the right not to have the work falsely attributed to someone else ('false attribution right'); and (d) the right of privacy to certain photographs and films ('privacy right').

5. Duration

Copyright lasts for the life of the author plus 70 years. If the copyright is owned by the author on their death it will pass in their estate.

6. Infringement

Any copying of a copyrighted work without the permission of the copyright owner constitutes an infringing act. Infringement is a STRICT liability, in other words, it is **unnecessary to prove intent** to infringe. Such copying triggers statutory rights of action for the copyright owner in the form of: (a) **civil remedies** including damages, injunctions, an account of profits, seizures etc; and (2) **criminal proceedings** if there has been illegitimate copying and the dealing in such copies with intent – i.e. 'piracy'.

7. Permitted uses

To use copyright belonging to someone else permission from that person or institution is required. Such permission can be given expressly by the copyright holder or can be granted through a licence.

There are certain permitted uses which allow one to avoid copyright infringement. The '**fair dealings**' **exceptions** are the most applicable in a university context:

- a. an individual may copy a work for private study or research if: (i) the study or research is not being done for a commercial

- purpose AND (ii) copying is not being done by or for someone other than themselves;
- b. a work can be copied in the 'course of instruction' but only if the copying is done by the teacher AND it **does not involve a reprographic process** (includes facsimile copies and all electronic and digital forms of the work);
 - c. an 'educational use' allows a work to be reprographically copied if it is to be used in the 'course of instruction' by an 'education establishment' (which includes a university) PROVIDED that the copying is LIMITED (i.e. not in excess of 1% of a work in any one annual quarter) and that **NO licences are available** (such licences are frequently available through the Copyright Licensing Agency).

The fair dealings exceptions **do NOT apply to electronic or digitised copies** nor in general to anything done for a commercial purpose.

School Policy to Copyright

Permission to Use Copyright

It is still the responsibility of all staff members to ensure that they have sought and received the necessary copyright permissions before copying, issuing or otherwise distributing such materials. Failure to get the necessary permissions may expose the School to infringement actions by the copyright holders.

Ownership of Copyright

The basic principle is that unless there is an express agreement to the contrary any copyright created by School staff in the 'course of their employment' with the School belongs automatically to the School under the employer exception. This is reflected in the School's standard academic staff employment contract which at clause 28 expressly states that: "The intellectual property right in work produced by School staff rests with the School". Such IPRs would include copyright.

Copyright generated in the 'course of employment' commonly includes: (a) all written work such as articles, power point slides, databases; (b) lecture notes and other taught course content, emails etc; (c) all images, diagrams, technical drawings, photographs etc.; and (d) software. This is true in all forms in which the copyright is expressed, whether physical, electronic, digital, magnetic etc. It is for the employee to demonstrate the existence of special arrangements that exempts them from this basic rule.

This basic principle obviously encompasses a wide remit. This remit has not, in general, been administered by the School, in other words, it is an area in which the School has not historically enforced its statutory and contractual rights. On the whole this will NOT change. The School shall continue the current arrangement with most copyright matters, including

research publications, books, presentations and other 'scholarly works' UNLESS such works form part of the School's formal teaching content or which is drawn from it, with the notable EXCEPTION of software. If there is any doubt as to whether the material in question falls within the scope of copyright which the School enforces please contact either your Head of Department, the Teaching Programme Director or the Business Development Officer.

How will these principles and guidelines actually be applied in practice?

Please refer to "Intellectual Property Policy: In Practice" which describes a number of common scenarios.

Basic Patents Law

Patents protect inventions. The Patents Act 1977 describes what can be protected, ownership, duration, what constitutes an infringing act and remedies.

1. Monopoly Right

Patents create a legal monopoly in favour of the owner over the exploitation of an invention, in return for requiring the inventor to publish an 'enabling' disclosure of that invention. This enforceable right provides a mechanism for the owner to control the use of their invention by third parties.

2. Ownership

Patents are owned by the inventor UNLESS the invention is created in the 'course of their employment' in which case the employer, subject to an agreement to the contrary (most commonly an agreement with a third party, for example, a funding body or industrial sponsor), owns the patent. The owner of the patent can: (a) exploit the patent; (b) sell or assign the patent; or (c) license the right to exploit the patent to a third party.

3. Requirements for a patent

To be patentable an invention must: (a) be novel; (b) possess an inventive step; and (c) have an industrial application.

4. Registration of a patent

To be effective a patent must be filed and subsequently examined by the UK Patent Office, and usually with a number of overseas jurisdictions, most importantly the EU. If, after filing and examination, a patent is deemed valid it will be granted and registered by the national Patent Office(s). Anyone subsequently attempting to file a patent on the same subject matter in the same jurisdiction as the one already granted shall be unable to do so. If two separate patents are filed on

the same subject matter the one which is filed FIRST (usually) shall have 'priority' over the other, which cannot then be patented.

5. Disclosure

A patent cannot be filed over an invention that is: (a) already the subject of a patent; or (b) already in the public domain (also referred to as 'prior art'). It is therefore important that there is no 'enabling disclosure' of an invention, for example through publication of research results, before the necessary patent application has been lodged.

6. Duration

If granted, a patent provides a 20 year monopoly to the owner. This can, in certain circumstances, be extended for a further 5 years.

7. Infringement

Patent infringement is subject to a STRICT liability, so it is not necessary to show intent to infringe. A number of civil remedies are available for infringement including damages, injunctions, seizure, accounting for profits etc.

School Policy to Patents

Unless there is an express agreement to the contrary any patent created by School staff in the ‘course of their employment’ with the School belongs automatically to the School under the employer exception. The School’s standard academic staff employment contract at clause 28 expressly states that: “The intellectual property right in work produced by School staff rests with the School”. Such IPRs would include patents.

The School shall always seek sole ownership of patents in order to manage the use of such patents effectively, equitably and with suitable compensation to the inventors. The School shall, in general, seek to license patents to suitable third parties in line with the recommendations of the Lambert Review¹.

How will these principles and guidelines actually be applied in practice?

Please refer to “Intellectual Property Policy: In Practice” which describes a number of common scenarios, including revenue distribution.

¹ http://www.hm-treasury.gov.uk/media/DDE/65/lambert_review_final_450.pdf

Part Two:

Intellectual Property Policy In Practice - Copyright

Introduction

The document entitled “Intellectual Property Policy” outlines the law and the School’s guidelines with respect to intellectual property, in particular to copyright and patents. This document describes how that policy with respect to copyright is implemented in practice by the School.

Copyright

The School is essentially concerned about two main aspects of copyright in relation to staff: (a) USE of any third party copyright and (b) OWNERSHIP of copyright.

Copyright can seem somewhat counter-intuitive and it is always worth remembering that **even if you authored a work you may not actually own that work** and so to copy, transfer or use that work you will still need the consent of the owner. You will most often encounter this point with works you have submitted to a journal for publication which, even though you have authored, may be owned by the publisher and thus you may require their permission to copy and distribute the article.

Table 1 provides a brief content outline. Table 2 contains a brief summary of what you can and cannot do, but it is always advisable to read the detail and, if still in doubt, seek advice from the Library or the Business Development Officer.

Table 1: Summary of Copyright Policy

Paragraph	Subject
Use of Copyright	
A.1	Permission to Use
A.2	CLA Permissions
A.3	Electronic & Digital Copies
A.4	Blackboard
A.5	HERON Service
A.6.1	Fair Dealings exception for 'research & private study'
A.6.2	Fair Dealings exception for 'instructional use'
A.7	Consequences of Infringement
Ownership of Copyright	
B.1	Submission to Journals
B.2	Research & Grant funding
B.3	Books & Other Scholarly Works
B.4	Presentations
B.5	Lectures or Course Materials delivered by outside speakers
B.6	Leaving the School
B.7	Co-Authors
B.8	Joint Ownership
B.9	Commissioned Works
B.10	Moral Rights
B.11	Students
B.12	Databases

Table 2: What you can and cannot do!

Can Do	Cannot Do
Submit research papers & articles to peer reviewed journals, trade journals etc	Use or copy copyright material not belonging to you or the School without the necessary permissions or exceptions
Use copyright material belonging to the School	Upload copyright material not belonging to you or the School onto Blackboard without the necessary permissions
Retain copyright ownership of books you write (unless commissioned by the School to write those books).	Subject to the research papers exception, to transfer or sell copyright material belonging to the School or a third party without the necessary permissions
Take lecture notes which you alone authored to your new employment, subject to third party copyright consents	Take copyright material which you did not alone author to your new employment without express permission from the School
Retain your moral rights to any work you author	

A Use of Third Party Copyright

Third party copyright means any copyright which you do not own personally OR which the School does not own, for example, copyright owned by commercial publishers or by an external lecturer.

1. Permission to Use

Essentially copyright allows the owner to control who copies, issues or distributes their work, therefore in order to copy a work you need the owner's permission. Consequently, where you are using the copyright of a third party in teaching materials, presentations, articles, research, private study etc. you **must seek the necessary permissions** directly from the copyright holder for such use UNLESS there is an express term in the material in question permitting such use (in a journal or book this would normally be found on the page containing the copyright & publishing details and if electronically through the publishers terms of access) OR a suitable licence or consent is in place (see A.2 & A.3) OR one of the 'fair dealing' exceptions applies (see A.6 & A.7).

2. CLA Permission for photocopies

The School has a licence from the Copyright Licensing Agency (**'CLA'**) which permits **photocopying of** extracts from certain third party works² from the UK and other Mandating Territories³ within certain defined limits. Please check the CLA website www.cla.co.uk/licensing/he/he_state.html for further information on the terms of such copying, but in principle it limits copying to no more than 5% of any given work OR one whole chapter in a book OR one whole article in a journal.

² The CLA licence permits the copying of extracts (whether the pages copied consist of text or graphics or are a combination of text and graphics) from most books, journals and periodicals published in the UK (and in the other Mandating Territories). The licence does not include permission to copy: printed music (including the words), maps, charts, or books of tables, public examination papers, workbooks, work cards and assignments, private documents (fee based tuition), works published by non-participating US publishers, bibles, liturgical works, orders of service, newspapers, industrial house journals and works published outside Mandating Territories.

³ The Mandating Territories are: the UK, Australia, Canada (including Quebec), Denmark, Finland, France, Germany, Greece, Iceland, The Netherlands, New Zealand, Norway, Republic of Ireland, South Africa, Spain, Sweden, Switzerland and by some publishers in the United States of America.

3. CLA permission does NOT cover electronic or digitised copies

The blanket permission described in A.2 does NOT apply to **electronic or digitised copies** of any third party works. Therefore, if you wish to copy any material from an electronic source (e.g. an electronic journal, internet etc) OR if you wish to digitise a third party work (e.g. by scanning, making a PDF file etc) you will need to seek prior permission DIRECTLY from the copyright holder. Such permission may be granted automatically by the copyright holder (see their terms of access) but you must NOT take for granted that this is the case if such terms are not clearly evident, especially if you are copying material from the internet.

4. Blackboard

The School operates a Virtual Learning Environment (**'VLE'**) called Blackboard. Any material uploaded onto Blackboard is obviously in an electronic format and therefore the stipulations in A.3 apply. You must NOT therefore upload material onto Blackboard without first ensuring that you have sought and received the necessary permissions from the copyright holders to do so. You can find more information about Blackboard on the School's support webpage:
www.lshtm.ac.uk/learn/index.html

5. HERON Service for electronic and digitised permissions

The necessity to seek permission from each copyright holder as described in A.3 is, of course, time consuming. The Library is therefore currently trialling the HERON Service. HERON provides a **clearing house service** – i.e. it will seek the necessary permissions for you, make electronic or digital copies on your behalf, and supply them with the required Compulsory Header information attached, BUT there are stringent stipulations attached to such use: you must make a list of all the permissions you are seeking AND you must submit that list to HERON at least 8 weeks before you need those permissions in place AND you must provide the number of students to whom you will be

providing the copies. HERON charges for this service. Further details of the Service are available from the HERON website at www.heron.ac.uk or from David Archer (Readers Services Librarian david.archer@lshtm.ac.uk).

6. Fair Dealings exceptions

The 'fair dealings exceptions' allow for limited copying a copyrighted work without the need for specific permission or a licence from the owner of that copyright. It must always be remembered however, that the fair dealings exceptions **do NOT apply to electronic or digitised materials**.

6.1 For 'research & private study'

You can make a copy of a work for the purposes of research or private study if you are making the copy yourself for yourself AND there is no 'commercial purpose' for such copying. This exception therefore does not apply to anything which is done in connection with teaching, giving presentations, writing articles or books or any other form of knowledge dissemination or which is done under the auspices of a commercial sponsorship agreement.

6.2 Fair Dealings exception for 'instructional use'

You can copy a work for the purpose of providing 'instructional use' in an 'educational establishment' (which includes the School), BUT the exception does not apply to copying if there is a 'commercial purpose' AND such copying must be 'fair' AND for the purpose of teaching. There are also strict statutory limits to how much can be copied. Finally, this exception **does NOT apply if you can get a licence**, for example through the CLA as per A.2. In practice therefore, you should NOT rely on this exception.

7. Consequences of Infringement

What happens if the necessary copyright permissions are not in place? If such an infringement is detected and pursued by the copyright holder

(and that is more likely in the new digital environment) the **School will be held liable** for copyright infringement and may be subjected to claims for damages, accounting for profits, injunctions preventing use etc. Also possible, though less likely in reality, individuals believed to be dealing with intent in the copyright materials may be subject to criminal prosecution. These dangers can be **mitigated** to some degree by having guidelines such as this one and the Library policies, and by staff being shown to have followed them or to have honestly tried to follow them, so that an infringement can be seen to be a mistake or an omission.

B Ownership of Copyright

1. Submissions to journals

In principle the School has copyright ownership over academic papers or articles for submission to peer reviewed journals, trade journals, newspapers, magazines etc. Submission of a paper usually requires the **assignment** of ownership of the copyright to the journal publishers which would therefore require the permission of the copyright holder (i.e. the School) BUT the School shall, in continuation of tradition, grant continuing permission to you to submit research papers and articles and to assign copyright ownership for such a purpose without requiring express permission from the School.

POINTS TO NOTE:

- Commercial publishers tend to restrict and limit access to their materials to paying customers, sometimes even to the exclusion of the author. An issue the School may wish to consider is whether to encourage authors to retain copyright (the School would need to formally assign such copyright over to them) in their articles and papers. This would allow the authors to control access and use of such materials through 'open source' licensing and it might encourage the development of a more equitable copyright culture in the UK. This practice is being done by some American universities, notably Boston University. In the UK there are a number of open source journals, for example, BioMedCentral.
- An alternative was pointed out during consultation by a staff member: "We do take [the Policy's] point that generally authors assign copyright to the journals. Unfortunately most authors do not appreciate that these agreements are negotiable, e.g. where an assignment of copyright is insisted upon, authors can stipulate that they may reuse the article elsewhere after a certain period of time. The Society of Authors has published recommendations along these lines, and some of us are already using the advice. So far we have received no objections. The School could draw people's attention to the options available and encourage staff to amend contracts. This would seem a better way of encouraging a more equitable copyright culture".

2. Research & funding agreements

It is not uncommon for research, collaboration, sponsorship or funding agreements to contain clauses that specify ownership and use of any IP, including copyright, generated in during the life of the agreement. For example, a research contract funded by an industrial partner may contain a clause stating that all IP generated shall be owned by them.

Alternatively, a collaboration agreement between groups at different universities may state that IP shall be shared equally or that ownership shall be determined based on the relative contributions of the parties. Such agreements, if properly authorised by the Research Contracts & Grants Office, shall take **precedence** over the basic principle of School ownership of IP. Where the basic principle will be affected, it is important that you consult with the Business Development Officer to ensure that the agreement is equitable in the circumstances to both the School and yourself.

3. Books & other scholarly works

Whether, in fact, the writing of books or other scholarly works by employees of the School actually falls within the their scope of employment is debatable, but in any event the School will NOT enforce its copyright ownership in such books or scholarly works even if such ownership could be successfully argued UNLESS the work will form part of the School's formal teaching content, in which case the work is likely to fall within the scope of a 'commissioned work' and shall be treated as such (see point B.9 below).

Where you write a book that subsequently and independently of its creation is used by the School in its teaching programmes you will still retain copyright ownership.

Where a book is written by an employee which directly draws upon either the School's teaching content or the work of other employees of the School there may be issues over copyright ownership (as well as equity). In such a situation please contact the Business Development Officer.

4. Presentations

UNLESS a presentation contains, or forms part of, or draws upon the School's teaching content the School will grant a continuing permission for the authors to use such material as they see fit. However, you must always bear in mind other third party rights in that work BEFORE giving the presentation (i.e. ensure the necessary consents are in place).

5. Lecture or Course Material delivered by outside speakers

It is not uncommon for outside speakers (i.e. persons not employed by the School) to deliver presentations to the School, sometimes as part of a taught course at the School. The materials comprising their presentation naturally belong to them or their institution UNLESS they have been employed or contracted specifically to give that presentation in which case their contract should make it clear who owns the copyright. Assuming that they retain copyright and that you wish to use their material, for example on Blackboard, you must seek specific permission from the copyright holder for such copying.

6. Leaving the School

If you leave the School to take up similar employment elsewhere thought needs to be given to any teaching content that you have authored that you may wish to take with you, for example, lecture slides. Use of such materials in the new employment constitutes a de facto transfer of that material, owned by the School, to your new employer. The transfer, sale or licensing of teaching content is usually subject to a suitable contract between the institutions.

In the context of two specific events the following should be done: (1) if the material was NOT authored solely by you, then express permission must be sought from the School to take such materials with you; (2) if the material WAS solely authored by you then the School grants you a non-exclusive non-transferable perpetual right to use those materials at your new employment as you see fit. Please be aware that third party

copyright permissions, in particular any given with regard to electronic or digital copies, may be specific for use at the School and thus may need to be renewed at your new employment before you can use those materials.

7. Co-authors

Co-ownership of copyright can arise where the copyrighted work is produced by joint authors. It is important to realise however, that joint ownership does NOT arise where the work is 'compounded of parts that demand discrete forms of mental activity', but instead DISTINCT copyrights are created. True co-authorship occurs only where each collaborator has provided a significant intellectual input to the finished work 'in prosecution of a pre-concerted joint design' which is indivisible from that of the other author(s).

An example of co-authorship is two individuals who write a novel together. In contrast where two musicians produce an opera and one writes the score and the other the song, each would have copyright on their individual contribution.

Where co-ownership does exist it has been held that a joint owner of that copyright is not entitled to exploit the copyright without securing the permission from his co-author(s). Therefore, in a situation where co-authorship exists, or shall come to exist, over material that forms part of the School's teaching content the School shall seek a copyright assignment from the other owner(s) in order to have **sole** ownership, preferably BEFORE the work is begun. Where the School is not the sole owner, you will need to seek permission from the other owner to make copies of the work in question.

8. Joint ownership

Joint ownership of copyright can also arise where there is a single author, for example if you are appointed to your post by more than one institution. If the task in which the copyright arises is done in the

course of this joint appointment, rather for one or the other of the employers, then that copyright shall be jointly owned by BOTH the employers in much the same way as occurs with co-authorship.

In a situation where joint ownership exists, or shall come to exist, over material that forms part of the School's teaching content the School shall seek a copyright assignment from the other owner(s) in order to have **sole** ownership, preferably BEFORE the appointment is approved. Where the School is not the sole owner, you will need to seek permission from the other owner to make copies of the work in question.

9. Commissioned works

Commissioned works are owned by the authors, not those commissioning the work. Therefore, if the School commissions a work from you (or from a third party) the School shall seek an assignment of the copyright ownership, probably as part of the commissioning contract. If such an assignment is not forthcoming the School shall not commission the work.

10. Moral rights

The School shall not, unless required to do so by a publisher, seek a waiver from an author of their moral rights in their work.

11. Students

Students are not employees of the School and thus in principle all the works they author are owned by them. The Library and Paul Shanley are currently preparing clear regulations on student copyright, but essentially if a student's works is to be used by the School either the requisite permission will have to be obtained from the student for such use through a written consent form, or the copyright will have to be assigned by the student to the School, as circumstances dictate.

12. Databases

The contents of a database are subject to copyright and all the same rules and guidelines apply. However, databases are also subject to the Data Protection Act 1998, in particular with regard to personal data, and all necessary precautions must be taken to comply with its regulations. The authors of a database may also wish to consider implementing terms and conditions for the use of that database by third parties.

Part Three:

Intellectual Property Policy In Practice - Patents

Introduction

The document entitled “Intellectual Property Policy” outlines the basic law and the School’s guidelines with respect to intellectual property, in particular to copyright and patents. This document describes how that policy with respect to patents is implemented in practice by the School.

Patents

1. Research & funding agreements

It is not uncommon for research, collaboration, sponsor or funding agreements to contain clauses that specify ownership and use of any IP generated in the course of the agreement. For example, a research contract funded by an industrial partner may contain a clause stating that all IP generated shall be owned by them. Alternatively, a collaboration agreement between groups at different universities may state that IP shall be shared equally or that ownership shall be determined based on the relative contributions of the parties. Such agreements, if properly authorised by the Research Contracts & Grants Office, **shall take precedence** over the basic principle of School ownership of IP. Where the basic principle will be affected, it is important that staff consult with the Business Development Officer to ensure that the proposal are equitable in those circumstances to the School and the staff involved.

2. Joint ownership

Joint ownership of patents may arise where a staff member is appointed to the post by more than one institution or, more likely, where the work is done in collaboration with another institution(s). Unlike in copyright, each of the joint owners is free to exploit the patent

themselves (this is a distinct possibility where the other owner is an industrial partner) though they cannot license or transfer their rights without the other party's consent. The School shall therefore, where possible, seek an assignment of any other party's rights in order to secure sole ownership, in return for a specified share in any future revenues to any former owners. Alternatively, where such assignment is not possible, one of the party's shall be nominated to lead the exploitation.

3. Students & other third parties

Students and other third parties are not employees of the School and thus any inventions they generate are owned by them, unless it is done in collaboration with the School or using School facilities or funding, in which case joint ownership shall probably arise. In such circumstances the School shall seek an assignment from the student or third party in order to secure sole ownership, in return for a specified share in any future revenues.

4. Publication

Publication of research results before a patent is filed will create an 'enabling' disclosure with the result that a patent on that subject matter cannot subsequently be filed. Enabling disclosures may also occur through oral presentation, articles etc if there is sufficient content for someone with the necessary skills to replicate the work. It is therefore vital that such disclosure not occur BEFORE a patent is filed and further, that any discussions with collaborators, industrial partners or other third parties occurs under a suitable confidentiality agreement.

5. Confidentiality Agreements

A successful patenting process requires that there is no disclosure of the invention BEFORE the patent is filed. Any discussions with collaborators, industrial partners or other third parties must occur under suitable confidentiality agreements. These may be included in the

funding contracts, but if they are not, the Business Development Officer can provide suitable confidentiality agreements.

6. Record Keeping

It is important to keep a careful record of all your work. In industry and in the US it is common for each page of research records to be signed and dated by the researcher or principle investigator AND by an independent witness AND for all pictures, diagrams etc. to also be witnessed and dated. Though laborious this level of care does allow the courts to track the evolution of the invention in case of a dispute.

7. Filing a Patent Application

Filing a patent application involves the cooperation of the academic, the funding body (if relevant) and any collaborators. The Business Development Officer will coordinate this process and also instruct the patent agent.

8. A Notable Difference in US Patent Law

The patent laws in most countries share basic similarities, but there is a notable exception in the US. Unlike many countries, the US does not establish the priority date for an invention as arising at the time that the patent application is **filed**, rather as the time at which the **inventive step** occurs. This means that an enabling disclosure, for example through publication of research results, does not disqualify an invention from being patentable, as long as a patent filing occurs **within 12 months** of such disclosure (though it would no longer be possible in the EU and many places elsewhere). The US position is therefore more flexible, but it obviously requires the researcher to be able to 'prove' when the inventive step occurred, so keeping careful records becomes vital because challenging the validity of a patent on the grounds of priority is not uncommon.

9. Licensing

To exploit an invention covered by a patent it is necessary either to own that patent or to license the right to exploit it from the owner. The Business Development Officer will coordinate this process with the inventors, industrial partners and other collaborators.

10. Revenue sharing

A patent, if successfully licensed, may generated an income stream in the form of royalties. The Board of Management has agreed that the School shall distribute that revenue as compensation for the effort behind the invention as described in Table 1 below.

Table 3: Revenue Distribution

	Inventor(s)	Unit	Department	School
£0-£50,000	70%	5%	10%	15%
£50,001-£250,000	50%	5%	15%	30%
>£250,001	30%	5%	15%	50%