



**Birmingham City University  
Intellectual Property Policy  
– Effective from 2017/18**

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## **IP Policy Definitions**

“BCU”	means Birmingham City University, a higher education corporation of Perry Barr, Birmingham, B42 2SU and where relevant its subsidiaries;
“Consultancy”	means services provided by a Consultant;
“Consultant”	means any person providing any consultancy services to BCU whether paid or unpaid;
“Course Material”	means material produced for use with Students including traditional paper based material, digital media, web based content, broadcasts, video and audio materials and software. This can include teaching material developed for credit bearing and non-credit bearing courses, materials designed for distance or e-learning, and materials specifically commissioned to be produced by BCU. Examples include slides and other audio-visual materials, manuals, handouts, demonstration models and other apparatus, assessment and examination materials including revision materials, podcasts, mobile apps with an educational or teaching purpose;
“Creator”	means any person who creates IP and/or Materials, including an author or designer under the Copyright Designs and Patents Act 1988 (as amended from time to time) and an inventor under the Patents Act 1977 (as amended from time to time);
“Exploitation”	means any sale, transfer, assignment, licence or other dealing in IP and/or the supply, sale or licence of goods or services involving use of the IP other than through Consultancy or the exploitation of Course Material;
“IP”	means any intellectual property rights such as patents, trademarks, domain names and registered designs

(including applications and the right to apply and to claim priority for any of the same in any country, region or jurisdiction in the world) as well as rights in inventions, goodwill, unregistered design rights, copyright, database rights and unregistered trademarks (as described in more detail in Appendix 1);

“Materials”

means any materials and any copies or reproductions of such materials in any electronic or physical format, including, for example, those listed in Part A of Appendix 2, any artistic works, literary works, dramatic works, musical works, design models, design documents, sound recordings and/or films as defined by the Copyright Designs and Patents Act 1988 (as amended from time to time), any inventions as defined by the Patents Act 1977 (as amended from time to time) and any processes, know-how, data and information;

“Net Revenue”

means Revenues less any costs or expenses incurred by BCU in the protection and Exploitation of IP as defined in paragraph 5.4;

“Research Student”

means those Students enrolled by BCU who are taking a programme of study whether part time or full time which leads to the award of an MPhil or PhD or equivalent research degree made by BCU;

“Revenue”

means any capital and/or income directly received or receivable by BCU in respect of Exploitation of IP from external partners and sources as a payment for commercial research, consultancies, training contracts, general IP development, licence fees and royalties but excluding Revenue received from a company in which the member of Staff or Student has an interest whether as shareholder or otherwise;

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“Revenue Sharing”	means the process for sharing Revenue between BCU and its Staff and/or Students as set out in paragraph 5.4;
“RIE”	means Research, Innovation and Enterprise, a department within BCU;
“Staff”	means any person employed whether on a part time, full time or agency basis by BCU and its subsidiary companies;
“Student”	means any person undertaking any course of research or study (credit or non-credit bearing) whether part or full time in conjunction with BCU;
“Taught Student”	means those students who are enrolled at BCU to take a programme of taught study whether part time or full time offered by BCU. The programme may lead to an award of BCU or an award made by an external body or it may be a non-credit bearing short course;
“Teaching Support Material”	means personal notes created by Staff for the purposes of course delivery (for example personal lecture notes and annotations to support Course Material);
“Use”	means the right to carry out all acts restricted under the Copyright Designs and Patents Act 1988 (as amended from time to time) and/or Patents Act 1977 in all formats for educational, training, research, promotional and any other non-commercial purposes (including those purposes described in paragraphs 2.5 and 2.6), but not for Exploitation.

## 1. **Introduction**

BCU recognises the production and sharing of knowledge is central to the mission of a university such as BCU and the importance of its contribution to the development of individuals and society. IP generated by teaching, research, and other work done at BCU where BCU facilities or resources have been used is an important asset of BCU, and has the ability to enhance its reputation as a creative, enterprising and professional organisation.

For example, BCU needs to protect its investment and rights in the IP in its Course Materials, so that they can be developed and improved over time to enhance the student experience as the teaching of Students is a core activity of BCU. Similarly BCU has the responsibility to identify, protect and manage effectively its IP from its research output to enhance its research profile. All IP which has commercial potential needs to be identified, protected and exploited to enhance BCU's reputation as well as generate income. BCU may work with partners to exploit its IP. BCU wishes to encourage all Staff and Students to contribute towards this activity.

### 1.1 **Scope**

This Policy is about Intellectual Property ("IP") as generated every day by Staff and Students and the use of third party IP in BCU. This Policy shall apply to all forms of IP and Materials in any format and in any medium and applies to all Staff with a BCU contract of employment, and Students and other third parties who contribute to the creation of IP and Materials jointly with or on behalf of BCU. It provides Staff and Students with a way to engage for the benefit of BCU and themselves.

This Policy revision is dated 1<sup>st</sup> August 2013, and applies to all IP generated after that date by members of Staff or Students. This revision supersedes the previous IP Policy dated 31<sup>st</sup> January 2006. BCU has always considered it "owned" IP generated by its Staff in BCU time or using BCU resources prior to the date of this Policy.

In exceptional circumstances, and where it is in the interest of BCU, the provisions of this Policy may be varied by written agreement between individual(s) concerned and BCU.

BCU intends to make it easier for individuals and departments to manage external activities and to ensure a degree of consistency and professionalism in its dealings with external bodies. Therefore linked to this Policy are BCU standard agreements for use when undertaking external activities involving BCU IP. Current versions of this Policy will be available on RIE's intranet website. BCU's standard agreements are available upon request from RIE.

### 1.2 **Contact**

RIE is responsible for the communication and administration of BCU's IP Policy. Overall responsibility vests in the Vice Chancellor.

Any queries regarding this IP Policy should be directed to the Head of Innovation & Entrepreneurship, RIE.

2. **IP right ownership**<sup>1</sup>

2.1 **Staff**

In accordance with legislation including but not limited to the Patents Act 1977 (or as amended from time to time) and the Copyright, Designs & Patents Act 1988 (or as amended from time to time), IP created or developed by Staff through the course of employment belongs to the employer i.e. BCU. In the case where Staff are also Students, their employment status takes precedence unless BCU indicates otherwise.

If Staff create IP outside the normal course of their duties of employment, with use of BCU resources, they will be deemed to have agreed to assign such IP to BCU. In such circumstances, BCU requires Staff to sign a confirmatory assignment of the relevant IP to BCU using BCU's standard wording (available from RIE on request). If in dispute, the decision of whether or not use has been made of BCU resources will be made by the appropriate Pro Vice Chancellor at the sole discretion of BCU.

BCU acknowledges the rights of Staff to retain ownership of IP and obtain benefit from all Materials arising from activities undertaken outside employment duties with BCU.

Where Staff are assigned duties or specifically commissioned in order to produce specific Materials and/or IP, Exploitation of these would not be included as part of Revenue Sharing.

If Staff are working at other institutions for example as an honorary academic they should have an agreement in place between BCU and the other institution in relation to IP. Any IP in Materials created during that appointment should normally lie with the employer who pays the salary.

Members of Staff who have an honorary association with BCU but are not employed by BCU are generally required to transfer any IP in Materials they create in the course of their honorary activities to BCU, subject to the terms and conditions of their honorary contract. Such individuals will be treated as if they were Staff for the purposes of Revenue Sharing. This includes visiting academics and individuals with honorary appointments at BCU.

If, having received full disclosure from the relevant member(s) of Staff, BCU decides it does not want to own, protect or Exploit the IP in the relevant Materials (see Appendix 2 for a list of examples), BCU will normally upon request assign its rights in the IP to the Creator, subject to any third party interests. BCU may not always be able to assign the rights in the IP to the Creator, for example, where a public sector body has funded work, that body may acquire the IP if BCU chooses not to Exploit the IP. In the event that the assigned IP is subsequently Exploited, BCU might require the Creator to pay the reasonable costs incurred by BCU in relation to such IP prior to the assignment.

2.2 **Consultants working for BCU**

IP in Materials created during the course of their work for BCU by Consultants belongs to BCU, unless agreed otherwise in a contract between BCU and the Consultant. Consultants are expected to contract with BCU on BCU's standard contract for procurement of services (standard consultancy contracts are available upon request from RIE).

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<sup>1</sup> See Appendix A and B for further details

### **2.3 Taught Student rights (undergraduate, postgraduate and other taught students)**

BCU acknowledges that Taught Students, as non-employees, own the IP they create independently in the course of their studies. This is subject to the exceptions detailed in this section 2.3.

Taught Students hereby grant to BCU a non-exclusive, royalty free, perpetual and irrevocable, worldwide licence to Use the Materials they create and/or provide to BCU in the course of their studies.

Taught Students are responsible for ensuring that they are able to grant BCU the rights set out in this Policy, including seeking permission from relevant third parties where appropriate.

If Taught Students:

- Create Materials in the course of any externally funded research and/or other projects, the ownership of IP in the Materials will be determined by the conditions of the funding. This means that BCU and/or the external sponsoring body will own the IP.
- Generate Materials with the substantial benefit of the BCU environment (which includes using BCU's facilities, resources, expertise and intellectual assets), IP in such Materials shall belong to BCU.

In these instances the Taught Student is deemed to have agreed to assign such IP to BCU. BCU requires Taught Students to assign their IP to BCU and to complete and sign formal documentation to give effect to such an assignment.

Examples where BCU requests that the Taught Student assign the IP to BCU include:

- Research projects which are usually proposed by BCU Staff and may often be connected in some way to BCU's on-going research interests and involve the use of pre-existing BCU IP. In such cases, Taught Students may join a team to investigate one particular aspect of a much larger academic programme, thereby drawing on the considerable expertise, reputation and infrastructure of the group.
- Where Materials developed by Taught Students may be needed to enable use to be made of the whole IP portfolio developed by Staff, or where IP is developed during the provision of courses using the input of Students, BCU seeks to avoid a position where a small gap in its IP portfolio precludes successful commercialisation.
- Where Materials are based on advice and ideas contributed by Staff and may be based on confidential, proprietary or otherwise valuable information that already belongs to BCU or a sponsor or where equipment of BCU is used to generate IP or where IP is created in collaboration with Staff.

If BCU does not want to own, protect or Exploit the IP (see Part B of Appendix 2 for a list of examples), BCU will normally upon request release its rights in the Materials to the Creator. BCU may not always be able to release its rights in the IP to the Creator, for example, where a public sector body has funded work, that body may acquire the IP if BCU chooses not to Exploit the IP. In the event that the released IP is subsequently Exploited, BCU might require the Creator to pay the reasonable costs incurred by BCU in relation to such IP prior to the release.

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Taught Students may voluntarily enter into a contract with BCU (at its discretion) to cover IP ownership and Exploitation of any Materials they create outside the course of their studies or which is not generated with the substantial benefit of the BCU environment. At its discretion, BCU may lead on Exploitation on behalf of the Taught Student in exchange for Revenue Sharing. The Taught Student shall give BCU all reasonable assistance to enable protection and Exploitation.

#### **2.4 Research Students rights**

All Research Students are required as a condition of enrolment to assign all IP they create during the course of their research to BCU and shall at the request and cost of BCU do everything necessary to enable BCU to complete, create, assert, and defend its IP. This is subject to the exceptions detailed in this section 2.4.

Research Students are responsible for ensuring that they are able to grant BCU the rights set out in this Policy, including seeking permission from relevant third parties where appropriate.

The reason for this is that the Research Student makes use of the BCU environment (which includes facilities, resources, expertise and intellectual assets), they are enrolled on research programmes which may be proposed by BCU Staff and may often be connected in some way to BCU's on-going interests and may join a team to investigate one particular aspect of a much larger research programme, thereby drawing on the considerable expertise, reputation and infrastructure of the group. Materials created may be based on advice and ideas contributed by Staff or on confidential, proprietary or otherwise valuable information that already belongs to BCU or a sponsor or, Materials developed by Research Students may be needed to enable use to be made of the whole IP portfolio developed by Staff. BCU seeks to avoid a position where a small gap in its IP portfolio precludes successful commercialisation and so requires the Research Student to assign the IP to BCU.

The Research Student will be deemed to have agreed to transfer such IP to BCU and will be treated as if they were a member of Staff for the purposes of Revenue Sharing. Where required BCU will make appropriate arrangements for Research Students to assign their IP to BCU and to complete and sign further documentation to give effect to such an assignment.

The exceptions to the above rule are:

- Where significant IP is provided by the Research Student prior to enrolment, BCU and the Research Student will agree terms to the assignment of any such pre-existing IP on a case-by-case basis.
- Where Research Students are funded independently of BCU such as by an external body, including but not limited to commercial organisations, educational bodies, charitable bodies, trusts and any other organisations, the ownership of any IP created whilst the Research Student is funded may be determined by the conditions of the funding. This will be dealt with on a case-by-case basis at enrolment to ensure that it does not contravene the conditions of grant and other agreements with the external body or the IP portfolio of BCU. Where relevant, the Research Student shall inform BCU of any funding terms and conditions prior to or when they enrol on a research programme at BCU.
- Where BCU decides at, or any time after, enrolment it does not want to own, protect or Exploit the IP (see Part B of Appendix 2 for a list of examples), BCU will normally upon

request assign its rights in the Materials back to the Research Student, subject to any third party rights. BCU may not always be able to assign the rights to the Research Student, for example, where a public sector body has funded work, that body may acquire the IP if BCU chooses not to exploit the IP. In the event that the assigned IP is subsequently Exploited, BCU might require the Research Student to pay the reasonable costs incurred by BCU in relation to such IP prior to the assignment.

Where any of the above exceptions apply, Research Students hereby grant to BCU a non-exclusive, royalty free, perpetual and irrevocable, worldwide licence to Use the Materials they have created prior to enrolment or that they create in the course of their studies, provided that BCU may (acting reasonably) agree to waive such licence in certain circumstances, including, for example, agreeing to keep the Materials confidential for commercial reasons relating to Exploitation by the Research Student or by a third party on the Research Student's behalf.

## **2.5 Copyright statement for Students**

When Students submit work for assessment it may be necessary for BCU to make paper and/or electronic copies, or to allow appropriate third parties to make copies, of that work. Without limiting BCU's other rights under this Policy, BCU may make copies, and may authorise third parties to make copies, of any work submitted by a Student for assessment for the following purposes:

1. to enable the Student work to be assessed;
2. to upload the Student work to a plagiarism detection service in order to compare the Student work with databases of previously available works to confirm there is no plagiarism. Assignments uploaded to such a service will be stored electronically in a database, together with the Student name and email address. The database enables the Student work to be compared with work already submitted to the detection service both by BCU and by other UK institutions using the service to identify any duplication of material in the Student work;
3. to add the Student work to these databases to ensure that future works submitted at this institution and others are not plagiarised from the Student work;
4. to archive electronically and make the Student work accessible via a BCU e-repository ("the Repository"). All third party material will be omitted unless the Student has obtained and attached a written permission statement from the owner(s) of the material included in the work. This should also include page numbers, references and original source details. If the Student work is at anytime in consultation with a publisher regarding this work the Student will need to declare the copy held on the Repository. Some publishers may regard the Repository copy as constituting prior publication. The copy can be removed from the Repository if it becomes an obstacle to future commercial publication.

## **2.6 Reproduction of Student Materials for educational, training, research, promotional and non-commercial purposes**

There are circumstances in which BCU may wish to reproduce, issue, communicate, distribute, and exhibit Materials created by Students to the public, for non-commercial purposes, such as but not limited to educational, training, research and promotional use which includes but is not limited to databases, websites, academic publications, exhibition catalogues, posters, leaflets, postcards and prospectuses. For the avoidance of doubt, promotional use includes circumstances in which BCU may use the Materials to promote BCU for its own purposes and such promotional activities shall not be considered to be commercial purposes.

While the licences granted to BCU in this Policy authorise such use, for the avoidance of doubt where the Student has in accordance with this policy granted only a licence to BCU, the copyright in all such works shall remain with the Student and any reproduction by BCU intended for commercial purposes will be subject to an individual licence to be negotiated with the Student.

Except in the circumstances outlined above, where Staff wish to reproduce Materials created by Students they are advised to contact RIE to obtain advice and the relevant release forms prior to any use of any Materials created by Students.

## **2.7 Image rights**

The policy of BCU is that the rights of Staff, Students and visitors to BCU, or individuals and groups who are visited by BCU's representatives, should not be jeopardised by any BCU activity. BCU further recognises its responsibilities towards children and young people.

Images may be captured during events, seminars and lectures organised and hosted by BCU using film photography, digital photography, video or other audio-visual medium and may be used on the BCU website, BCU prospectus or course brochures or in other publicity material (such as internal and external newsletters), exhibition of Student work or graduation ceremony brochures and Course Materials, and may be provided to the media for publication in local or national newspapers or educational magazines. BCU acknowledges its responsibilities in capturing images by photography or other means under the provisions of the following legislation.

The Children and Young Persons Act 1963 (or as amended from time to time): BCU undertakes to seek a licence where necessary from the appropriate local authority for any performance activity in which children are taking part and which may be recorded with a view to being broadcast, published or shown to the public.

The Protection of Children Act 1978 (or as amended from time to time): BCU recognises that it is a criminal offence to take, permit to be taken, distribute, have in one's possession or publish indecent photographs (including films and other imagery) of children.

The Human Rights Act 1998 (or as amended from time to time): BCU recognises an individual's rights to privacy as protected by this Act.

The Data Protection Act 1998 (or as amended from time to time): BCU undertakes to inform all those whose images may be recorded (or their parents/guardians if under 18 years of age) of the purposes for which the images may be used by BCU.

In this context BCU informs all persons taking part in BCU activities that they may be photographed, filmed, videoed or otherwise captured in image form. Where possible and practical to do so, BCU seeks written consent to image capture (release forms available upon request from RIE). Where this is not possible for practical reasons, unless express objections are received, individuals attending an event at BCU are deemed to have given their consent by attending or remaining at the event. Any queries or complaints should be raised with the event host in the first instance.

## **2.8 Performance rights**

BCU acknowledges that Students and Staff own all performers' rights in any performance. Performances are defined as a musical performance, a dramatic performance, a reading or recitations or a performance of a variety act or similar performance. Performance rights exist independently of copyright and moral rights in any works.

Students and Staff hereby grant to BCU a non-exclusive, royalty free, perpetual and irrevocable, worldwide licence to Use any recording (in any format) of any performance:

- by Students created in the course of their studies; and
- by Staff created in the course of their employment (including for example any recording of their lectures).

Where Students or Staff use a third party recording at BCU and/or publicly perform a third party work, they are responsible for ensuring that they have the right to use such recording and/or publicly perform such, including seeking permission from relevant third parties where appropriate.

## **2.9 Course Materials and Teaching Support Materials**

In the case of Course Material produced for use with Students or Course Material developed for credit bearing and non-credit bearing courses including Course Material designed for distance or e-learning (i.e. designed to be predominantly used by Students studying at a distance from BCU) and/or where the Course Material has been specifically commissioned to be produced for BCU, the IP in such Course Material belongs to BCU.

BCU grants the Creator of the Course Material a royalty-free, non-exclusive licence to use the Course Material created by them for teaching or research purposes which are non-commercial only for as long as the Creator remains employed by BCU or a Student.

Such licence may continue at the sole discretion of BCU after the termination of employment or studies or engagement with BCU provided that the use of the Course Materials does not damage the Exploitation of the Course Materials by BCU or prejudice in any way the interests of BCU. BCU copyright with year should be shown on all Course Material e.g. © Birmingham City University 2013.

Course Material that is the copyright of BCU can only be used for non-commercial purposes. Use of Course Material for commercial purposes is not included as part of Revenue Sharing. BCU does not seek ownership rights over Teaching Support Material as long as it retains a royalty-free, worldwide, sub licensable, non-exclusive licence to Use the Teaching Support Material.

## 2.10 **Publication**

A member of Staff or Student shall inform BCU (usually via line management to RIE) before entering a commercial contract (excluding non-commercial academic work such as journal papers) with a publisher or producer of works in other media in relation to copyright in a work produced by that Staff member or Student where the IP belongs to BCU or where BCU has any rights in the IP. BCU will usually agree to the assignment of copyright to the publisher in paper printed Materials and electronic Materials intended for publication in academic journals, websites or books **unless**:

- a) it relates to Materials specifically produced as distance learning materials; or
- b) where publication could result in certain rights of BCU being adversely affected, for example, inability to apply for patent protection. In this latter case consent will be given once the adverse effect no longer exists.

Other cases will be considered on a case by case basis.

## 2.11 **Moral rights**

Moral rights protect such things as derogatory treatment or false attribution. Under Clause 79 (3) of the Copyright, Designs & Patents Act 1988, it is clear that an author's moral rights do not apply to works created during the course of employment. BCU will so far as is practicable identify the original author(s) to works created by Staff or Students.

## 3. **Disclosure of IP rights**

Where any member of Staff or Student of BCU creates any of the types of Materials listed in Part A of Appendix 2, they shall declare its existence to RIE. To facilitate the process Idea Disclosure Forms are used (available on request from RIE). These documents support ownership claims and protect the confidentiality rights of the individual and BCU and should contain all necessary information concerning the provenance of the Materials and the circumstances in which they were created (including information on research funding and other contributions to the work).

RIE shall determine whether BCU has any obligations to research sponsors or other organisations in respect of the IP in the Materials. Where there are no such obligations RIE following consultation with the Creator of the Materials shall decide upon and implement the most appropriate route for Exploitation (if any).

In the event of a dispute between the Creator of the Materials and RIE concerning ownership, protection or Exploitation of the IP the matter shall follow the Grievance Procedure in the Staff Handbook. Within this process the BCU reviewing manager may consult any external expert that s/he considers to be desirable.

Where BCU decides to seek Exploitation, the Creator of the Materials shall provide reasonable assistance with the Exploitation process by (for example) providing information promptly upon request, attending meetings with potential partners and advising of further development.

## 3.1 **Confidentiality**

Although the Freedom of Information Act 2000 has a presumption that most information within BCU should be publicly available, in terms of protecting IP, Staff and Students should be aware of the importance of maintaining strict confidence over BCU confidential information (including Materials and/or IP) and take all reasonable steps to ensure that confidentiality is maintained. This is important otherwise it may impair BCU's ability to claim ownership and/or Exploit the IP. Commercially sensitive documents should be marked as “**Confidential**” on all pages. RIE will assist with the correct confidentiality requirements should external confidential disclosure be required (forms available on request from RIE). See paragraph 5.3 for signing confidentiality agreements.

#### 4. **Protection of IP**

Where appropriate, Staff and Students should ensure that the creation of IP is properly documented in a form that would enable the date of creation of the Materials and the nature of the IP to be clearly established.

This may be through regular dating and signatures on log-books, or through writing-up and self-addressing of posted descriptions as appropriate. It may be by ensuring copyright in a work is properly asserted (using the © symbol followed by BCU and the year of creation of the work on all relevant documentation). Such protection must include such work as bid submissions and conference papers.

Where it is decided that BCU will apply for legal protection for IP, such as registration, it is expected that Staff or Students involved in creating the relevant Materials will provide all reasonable assistance in the process, for example, by providing information promptly upon request, attending meetings, advising on further developments and maintaining confidentiality as required.

#### 5. **Exploitation of IP**

BCU will consult with the Creator(s) and all other relevant Staff and Students, and consider all reasonable proposals, in relation to the Exploitation of IP. Where such IP belongs to BCU, it will be subject to Revenue Sharing unless excluded under paragraph 2.1. In all other cases assistance may be given with Exploitation subject to agreeing satisfactory arrangements which ensure that BCU receives an appropriate share of any monetary or other revenue or value derived from Exploitation.

##### 5.1 **Assistance with Exploitation**

BCU actively encourages its Staff and Students to take the initiative in identifying IP which has potential Exploitation or publicity value or which could otherwise enhance the reputation of BCU together with the potential scope of its Exploitation as appropriate.

After disclosure by, and consultation with, the Creator(s), BCU may through RIE, decide at its discretion to protect or develop such IP using BCU resources and funding.

For IP that it decides to assist with the Exploitation of, RIE, in collaboration with the Creator(s), shall draw up an IP project proposal (including IP protection requirements, time schedule & targets, budget, expected income and further long term development plans for the IP) and accompanying commercial contracts, where necessary.

##### 5.2 **Management of Exploitation**

RIE in conjunction with the Creator(s) and the project manager will implement the above plan for Exploitation.

Possible opportunities for Exploitation are:

- Research agreement in collaboration with external partners
- Licensing
- Spin-outs companies
- Joint ventures funded jointly with an external partner

### **5.3 Signing of contracts and confidentiality agreements**

All contracts with external bodies need to be signed by an authorised signatory of BCU in line with the Quality Assurance for External Projects. RIE can provide advice.

Confidentiality agreements need to be signed by the individuals undertaking the obligation of confidentiality and must be countersigned by the relevant authorised signatory within the Faculty or Service Department. Staff and Students are **only** authorised to enter into confidentiality agreements with third parties on behalf of the BCU using BCU standard confidentiality agreements. Any variations to the BCU standard confidentiality agreements or third party originated confidentiality agreements must be agreed by RIE before signing. All original signed documents must be sent to RIE for filing.

### **5.4 Revenue Sharing from Exploitation of IP**

While BCU retains the ownership of IP as set out above, it will incentivise its Staff and Students by sharing Revenue generated from IP.

Any Revenues which arise from Exploitation of the IP which are received by BCU will be apportioned in accordance with a sliding scale as set out below.

Each case will need to be considered in the light of the individual circumstances applying, for example, the balance between BCU time and resources and those privately invested by the individual concerned or performance against a business plan. BCU reserves the right to negotiate different terms for sharing Revenue from those below and will normally do so when outside bodies are involved or when the case is complex and shared between a number of people who are responsible for origination. This includes but is not limited to spin-out company formation or Exploitation with external partners.

BCU shall be entitled to recoup from Revenue any costs or expenses it incurs in protection and Exploitation of the IP including but not limited to:

- The costs associated with protection of the IP
- The costs of defence of the IP
- The costs of marketing the Materials
- The costs of any legal agreements associated with the IP
- The costs of any development work that is not externally funded or recoverable
- Any other costs that are deemed by RIE to be necessary to the successful commercialisation of the IP
- An appropriate apportionment of the costs of RIE
- Overheads on all of the above

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- The risk cost of any capital sums applied as appropriate at the appropriate market rates
- Additional expenses incurred by BCU in paying additional PAYE income (or equivalent) such as employer’s contribution to National Insurance or pension costs. Please note that the Revenue sharing benefits are not normally pensionable.

This will generate Net Revenue and this will be apportioned as defined below.

<b>Net Revenue</b>	<b>Creator’s share</b>	<b>BCU share</b>	<b>Faculty/Service Department share</b>
<b>First £15,000 of Net Revenue</b>	80%	10%	10%
<b>Revenue &gt; £15,000 of Net Revenue</b>	50%	25%	25%

It is the responsibility of the Creators to keep BCU informed of their status and whereabouts. Whilst Revenue is being accrued, BCU will set aside Revenues for up to 2 years for Creators who have changed bank accounts and lost contact with BCU. BCU will not be a trustee of any such unclaimed Revenue payments.

Any Revenue payments remaining unclaimed for 2 years from the date the Revenue is received by BCU will, after that date, be forfeited and will revert to BCU and will be distributed between any others entitled to share in such Revenue, excluding the missing Creator(s).

In the case of the death of a Creator due a share of Revenue, that share of Revenue will be payable to the estate of the deceased.

BCU ensures that both employer’s and employee’s statutory contributions are remitted to Her Majesty’s Revenue and Customs (HMRC). The statutory deductions for income tax and National Insurance are made, and Staff receive the net amount. Non-BCU Creators (including ex-Staff and Students) must ensure that they are registered with HMRC for self-employed Schedule D status as they are legally responsible for their own tax arrangements.

The Revenue sharing arrangements above shall not be applicable to members of Staff who are assigned duties in order to produce the IP. Any payments to Staff in this category shall be the subject of ad hoc determination by the relevant Executive Dean or Service Director at the time of receipt of Revenue.

Where more than one member of Staff and/or Student is involved in the development of IP, there will be a presumption that joint Creators will each have equal shares. For example where there are two joint Creators, a Net Revenue of £10,000 will be split as follows.

Creator 1	£4,000 (40%)
Creator 2	£4,000 (40%)
BCU	£1,000 (10%)
Faculty/Service Department	£1,000 (10%)

The equal split between joint Creators may be varied if there is a specific agreement to the contrary as agreed by the Creators. Where joint Creators cannot reach an agreement on the shares to be apportioned, BCU will mediate/arbitrate to impartially assist the Creators in reaching an amicable compromise.

## **6. Use of third party IP**

Documents, information or other materials belonging to third parties should only be used in connection with BCU activities or incorporated into BCU promotional, teaching or research materials with the consent of the third party. Failure to do so could lead to BCU being sued for unauthorised use and damage the reputation of both BCU and the individual concerned.

While Students are ultimately responsible for their own actions, Staff are encouraged to educate Students in respect of the use or incorporation of third party materials into the Students' work and Staff are required to confirm that Students are able to identify when third party materials have been used or incorporated into their work.

When photographs of Student work needs to be taken for use in BCU promotional materials, BCU may commission the photographer and the commissioning Staff member is responsible for obtaining a budget and ensuring that the photographer grants BCU the necessary rights to reproduce the photographs in any promotional material.

A list of current subscriptions paid annually by BCU for use in teaching is published at [library.bcu.ac.uk](http://library.bcu.ac.uk).

### **6.1 Internet Materials**

It is sometimes thought that material posted on the internet is freely available for use. This is not true. Most material will be copyright protected and therefore permission must be sought before any such material is used in any BCU promotional, research materials or Course Materials. RIE can assist with advice and suitable acknowledgement wording. BCU's Library Services can assist in the location of the author and in the seeking of permission for use.

### **6.2 Trademarks and Brands**

A trade mark is a designation of goodwill. The permission of the owner must be sought before any third party trade marks (such as logos, company or product names) or other branding are used in any BCU promotional, research materials or Course Materials. RIE can assist with advice and suitable acknowledgement wording. BCU's Library Services can assist in the location of the author and in the seeking of permission for use.

### **6.3 Newspaper, Journal and Magazine articles and photos**

Most newspaper, journal and magazine articles and photos will be copyright protected and permission must be sought before any such material is used in any BCU promotional, research materials or Course Materials. BCU has overall arrangements which cover some publications but if such use is not covered by these general arrangements, RIE can assist with advice and suitable acknowledgement wording. BCU's Library Services can assist in the location of the author and in the seeking of permission for use.

### **6.4 Open source materials**

Some software and databases are freely licensed under what is called open source licences. Where such materials are used, it is often a requirement that the end product produced with them is also made freely available under open source. Any proposed use of open source materials in BCU teaching or research materials, especially those with external funding, should be discussed with RIE before any such use.

**6.5 Case studies to reflect BCU use of a third party's information, photos, trademarks for promotional purposes.**

Most case studies, from whatever source, will be copyright protected and permission through a signed agreement (form available upon request from RIE) must be sought before any such material is used in any BCU promotional, research materials or Course Materials. RIE can assist with advice and suitable acknowledgement wording. BCU's Library Services can assist in the location of the author and in the seeking of permission for use. Equally where a third party wishes to use a BCU case study, it should be by formal agreement (form available upon request from RIE).

**7. Use of BCU branding**

The BCU branding policy and guidelines are issued by the Marketing and Communications Department.

BCU supports a variety of BCU branded online media in the public domain. Staff must not use any other online medium for publishing Course Materials without permission of their Faculty Board.

Requests for the use of BCU name and/or branding by third parties in endorsing research and products shall be referred to Marketing and Communications Department.

**8. Contracts with sponsoring or funding bodies**

BCU looks for sponsorship and funding of its activities from a broad base. When negotiating with external sponsors, BCU retains the discretion to reach an agreement with the sponsor in relation to proper Exploitation of the IP. Where commercial bodies provide sponsorship, BCU generally seeks to retain the IP and usually agrees to give the sponsor a licence to exploit the rights on a commercial basis. Negotiations with external sponsors take into account the level of overheads paid by the sponsoring body whilst reflecting the overall public interest in BCU retaining the IP. Occasionally retention of the rights in IP may not be feasible. Where BCU cannot negotiate IP Exploitation it will seek publication rights.

Contracts with the sponsors clearly setting out the position are negotiated before the start of the work in order to avoid subsequent disputes. RIE takes the lead in negotiations with sponsoring or funding bodies.

BCU may delegate its powers to negotiate to a member of Staff in a particular case and takes due account of the need to avoid conflicts of interest.

**9. Conflicts of Interest**

BCU wishes to avoid any actual or perceived conflict of interest in handling its IP. Where a member of Staff or RIE has reason to believe that entering into any particular agreement, whether a BCU agreement or a private agreement, may lead to an actual or perceived conflict of interest the member of Staff is required to work with RIE to explore the circumstances of such potential or actual conflict.

Upon the results of a joint investigation, RIE will decide, after taking advice, what, if any, action should be taken to avoid the conflict of interest, which may include for example,

modifying an agreement, entering into an additional agreement, taking no action or not allowing the agreement to proceed.

In the event that the decision is disputed, the matter shall be referred to the appropriate Pro Vice Chancellor. Following consultation with the parties and any external expert that the Pro Vice Chancellor considers to be desirable, the Pro Vice Chancellor shall decide upon a final course of action to resolve the dispute.

10. **Spin-out companies**

BCU will consider the establishment of, or participating in the creation of, a limited company or a joint venture with a suitable partner to exploit particular IP if it has the right characteristics.

Shareholdings by Staff or Students in BCU spin-out companies and joint ventures will be agreed on the basis of the business and/or technical requirements of the respective spin-out company or joint venture.

This does not include Student or graduate start-up companies where BCU does not hold an interest in the IP.

11. **Licensing**

BCU considers the licensing of IP to third parties in order to exploit particular IP if it has the right characteristics. RIE will take the lead in any negotiations for the licensing of IP to such third parties.

12. **Equality**

BCU's commitment to equality means that this policy has been screened against the aims of the general duty in relation to the relevant protected characteristics, the use of comprehensible, inclusive language, and the avoidance of stereotypes. This policy is available in alternative formats on request.

## **Appendix 1: Introduction to IP Rights**

There are a number of different IP rights which are recognised by English law. Generally IP rights can be assigned, licensed or otherwise transferred by their owner, moral rights cannot be assigned. Some dealings may need to be in writing and some may require registration. "IP Rights" means rights for which registered protection is available upon application such as patents for inventions and registered designs, trademarks, domain names and registered designs and others where no application is necessary in the UK such as some design rights, copyright and moral rights, database rights, unregistered trademarks, know-how and confidential information. IP Rights generated by an employee in the course of employment belong to the employer. Generally in other circumstances they belong to the Creator although some may belong to the person paying for their creation.

### **Patents**

A patent is a monopoly right to the exclusive use of an invention. "Invention" encompasses machines, products, processes and their individual constituent parts. A patent gives its owner the exclusive right to prevent others from using or exploiting his invention. Not all inventions are patentable, for example discoveries of certain scientific or mathematical methods and some computer software are not patentable inventions. The invention must be shown to be new; involve an inventive step; be capable of industrial application; and not be of an excluded type.

An invention must never have been made available other than under a valid confidentiality agreement to anyone, in any way, anywhere in the world before the date on which the application for the patent is filed. It is acceptable for an invention to be known secretly and to be used for example under a confidentiality agreement. It is vital to ensure that the ability to obtain patent protection is not lost by disclosure other than under a confidentiality agreement. Patents are available in the UK and in many other foreign jurisdictions. A UK patent has a life of 20 years from the date of filing the application. During that 20 year period, the patentee has the option of renewing it annually upon payment of a progressively higher renewal fee. There are supplemental protection periods of up to 5 years beyond the normal terms of a patent in the case of certain medicinal and plant protection products. The right to apply for a patent usually belongs to the inventor. However an invention made by an employee employed to invent or made by him in the course of his normal duties will normally belong to his employer. Additionally if the employee has some special responsibility to further the employer's business the invention will again belong to the employer. All other inventions which do not fall within these categories belong to the employee. In the majority of cases, inventions made by members of staff at BCU will belong to BCU. Where the employer has the benefit of a patent which arises from an invention of the employee, the employee is entitled to a limited amount of statutory compensation. Where the patent belongs to the employee but the employer acquires it by licence or assignment, the employee is entitled to statutory compensation if there is a disparity between the remuneration that the employee receives and the right and benefit gained by the employer.

### **Designs**

There are a number of types of design which receive different protection under the law.

#### **Registered Design**

Registered protection is available to a "design" which means the appearance of the whole or part of a product resulting from features of in particular lines, contours, colours, shape, texture or materials of the product or its ornamentation. Designs of component parts of complex products can be registered but those rights cannot be enforced where the use is for repair purposes. There is a 12 month grace period during which the owner can test the market

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without losing the right to apply for protection. The right to apply for a registration belongs to the designer or the designer's employer where the design is created during the course of employment. Where the design is commissioned by a third party the commissioner is the owner of the right to apply for the registered design. Registered design protection lasts for 25 years and runs from the date that the application is first filed at the Designs Registry. Protection is given in periods of 5 years which can be extended by further 5 year periods up to the maximum of 25 years on payment of the renewal fee.

#### Design Right

Design right arises without any need for registration and is a right subsisting in any aspect of shape or configuration. However, the design must be original and not commonplace; not a method or principle of construction; not have its shape or configuration dictated by function or the need to match nor consist of surface decoration. Unregistered design right normally lasts for 10 years from the date of first marketing of the article to which the design is applied with an upper limit of 15 years from creation. The first owner of the unregistered design right is the Creator of the design unless created by an individual in the course of employment where the employer is the normal owner. Where the design is commissioned the unregistered design right belongs to the commissioning party.

#### Design protected by copyright

Some designs which are artistic works may be entitled to copyright protection. Copyright is dealt with below.

### **Copyright, Performance and Moral Rights**

#### Copyright

Copyright in the UK arises without any need for registration. It will subsist in any original literary, dramatic, musical or artistic work, sound recording, film, broadcast and cable programme; computer software and database and the typographical arrangement of published editions. It usually lasts for the life of the author plus 70 years. Notable amongst the exceptions are typographical arrangements where the period is 25 years. The author of the work is normally the first owner of the copyright save that where the work is created during the course of employment the employer is the owner in the case of literary, dramatic, musical or artistic works or films. Even where the works are done on commission it is the author who is the owner and not the commissioner in the absence of an express written agreement.

#### Moral Rights

Moral rights consist of the right to be identified as the author of work; the right for the work not to receive derogatory treatment; and the right against false attribution of a work. Certain rights have to be expressly asserted before they can be infringed. Moral rights do not apply to things such as computer programs and computer generated works. Some moral rights belong to the maker even if the maker is an employee acting in the course of employment.

#### Performance Rights

Performers are entitled to various rights in their performance whether these take place on the stage, during a concert and so on. Performers also have rights in any recording, film or broadcast of that performance. Performances are defined as a musical performance, a dramatic performance, a reading or recitations or a performance of a variety act or similar performance. Performance rights exist independently of copyright and moral rights in any works.

A performer has the right to control the broadcasting of their live performance to the public. The permission of a performer must also be sought before a recording of the live performance

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is made and is also needed to make copies of that recording. A performer may be entitled to remuneration in respect of broadcasting, other types of communication to the public by electronic transmission, public performance and rental of those copies.

**Database Right**

This is a right distinct from copyright, which may also protect a database. It belongs to the person who takes the initiative in relation to its contents or invests in obtaining it, or to his employer when made by an employee in the course of employment. It lasts for 15 years.

**Trade Marks**

A trade mark is any sign which can be represented graphically and is capable of distinguishing goods or services. It can be a word, a design, letters, numbers or in some cases the shape of goods and their packaging.

Trade marks can be either registered or unregistered. An unregistered trade mark will be acquired by usage in relation to a business and will be the property of the business. A registered trade mark must be distinctive and not generic. It must not purely designate the kind of goods or relate to their quality or origin. A trade mark is capable of lasting in perpetuity, subject, in the case of a registered mark, to payment of renewal fees.

Brands, logos and trademarks will carry the <sup>TM</sup> symbol. The ® symbol cannot be used until the trademark has been formally registered with the Intellectual Property Office.

## **Appendix 2: Which IP will BCU want to assert ownership over?**

### Part A

The following is an illustrative list of the activities and outputs BCU is likely to want to own the IP in:

- Audiovisual materials (including audiovisual entertainment)
- Brands
- Commercial graphics including logos, fonts, etc.
- Software programmes
- Course Material
- Databases
- Design rights including registerable designs
- Discoveries
- Formulations and methods of formulation of materials and compounds
- Internet domain registrations
- Inventions
- Know-how of a valuable nature (i.e. commercially valuable, reputation enhancing)
- Methods of doing business
- Patents or potentially patentable innovations
- Registered and non-registered trademarks
- Research log books – for lab based work
- Software algorithms

### Part B

Subject to where Staff are specifically commissioned to produce Materials, are expressly requested to produce such Materials for BCU or the nature of the Staff member means they are predominantly paid to produce such Materials as outlined below, the following is an illustrative list of the activities and outputs BCU is unlikely to want to own the IP in:

- Art and design drawing books
- Illustrations
- Limited editions of 50 or fewer artefacts, pictures and designs
- Musical compositions
- Musical recordings (where BCU facilities are not used)
- Newspaper/magazine articles
- Novels
- Paintings
- Poems
- Recordings of musical or dramatic performances
- Screenplays
- Sculptures
- Theatrical recordings or performances
- Scholarly output as follows:

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- Books (provided the Executive Dean's permission has been sought prior to publication)
- External examination duties
- Invited lectures
- Journal editorships
- Publications of research outcomes including exhibitions of work not financially supported from BCU research funds
- Radio or TV programmes
- Seminar papers
- Service on public, governmental and charitable bodies
- Teaching Support Materials

**Appendix 3: Document History**

<b>Version</b>	<b>Date</b>	<b>Status</b>	<b>Author</b>	<b>Changes</b>
v1.0 Approved policy	31 <sup>st</sup> January 2006	Approved by Vice Chancellor's Office	Research, Innovation and Enterprise	n/a
V2.0	1 <sup>st</sup> August 2013	Approved by Vice Chancellor's Office	Research, Innovation and Enterprise	<ul style="list-style-type: none"> <li>• This is a major update to the IP Policy. The revised IP Policy has clarified the University's ownership of IP in terms of :               <ul style="list-style-type: none"> <li>○ Course Materials and Teaching Support Materials developed by staff</li> <li>○ Clarification of ownership of IP of taught students versus research students.</li> <li>○ Addition of Performance rights of staff and students</li> <li>○ Addition of Image Rights section</li> <li>○ Clarification of moral rights relating to students and staff</li> <li>○ Free licence of student produced materials for promotional purposes such as a University photograph of student artwork used in a prospectus</li> </ul> </li> <li>• The rewards from IP have been amended to reduce the creator's share from 100% to 80% of first £15k of net revenue. The reason for this being that University has not had large IP licensing income returns so the academic was getting a major benefit without the University seeing any return from royalties. Therefore we have changed the policy which is still one of the more favourable policies towards academics in the sector. The share between the University and the faculty or service department has been defined. Further clarification has been provided in terms of who is a Creator as defined by the IP Policy and how the revenue is distributed.</li> <li>• The section on Spin-out companies has been amended and a section on Licensing has been added</li> <li>• An Equality Statement has been added</li> </ul>