

## **Intellectual Property Policy**

### **Equality and Diversity**

This Policy will be applied in a non-discriminatory way, irrespective of an employee's age, disability, gender, gender identity, gender reassignment, race, religion or belief or sexual orientation.

### **Accessibility**

If you require any document in an alternative format, for example, in larger print, please contact HR.

## **1. Statement of Principles and Objectives**

The College's Intellectual Property or IP Policy embodies the following principles and objectives:

- It must be consistent with and assist the College in meeting its legal, regulatory and contractual obligations.
- It should further the College's charitable objects to advance knowledge, wisdom and understanding by teaching, study, public service and research, and to make available to the public the results of such research.
- It should preserve and enhance the freedom of College staff and students to undertake research in all aspects of their academic fields of interest.
- It should help create and foster an atmosphere conducive to promoting entrepreneurial activity and external engagement.
- It should equitably distribute proceeds from commercialisation of intellectual property while generating income to support the College's wider activities.
- It should be proportionate, effective and workable, and provide clarity about the ownership status of Intellectual Property.

## **2. Definition of Intellectual Property**

According to the definition used by the World Intellectual Property Organization (WIPO), "Intellectual Property" includes the rights relating to:

- *literary, artistic and scientific works,*
- *performances of performing artists, phonograms, and broadcasts,*
- *inventions in all fields of human endeavor,*
- *scientific discoveries,*

- *industrial designs,*
  - *trademarks, service marks, and commercial names and designations,*
  - *protection against unfair competition,*
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”*

See Article 2 (viii) of the ‘Convention Establishing the World Intellectual Property Organization’ (1967)

Familiar types of Intellectual Property include patents, copyright and trade marks, but the term Intellectual Property also encompasses lesser-known rights such as: design rights; service marks; database rights; plant breeders’ rights; publication rights; rights in know-how and confidential information; rights of priority; and unregistered rights in trade name, trade dress and get-up.

In this Policy the term “Intellectual Property” is used in the widest possible sense. It includes types of Intellectual Property yet to be conceived or formalised, as well as the right to apply to register Intellectual Property, and the right to take (or refrain from taking) action in respect of any infringement or alleged infringement of Intellectual Property in any jurisdiction.

### **3. Ownership of Intellectual Property**

Under English law the original owner of Intellectual Property is generally the person who first creates or generates it. As an exception, an employer is the original owner of Intellectual Property created or developed by an employee in the course of their duties, or while undertaking duties specifically assigned to them (or by an employee who has a particular duty to further the interests of their employer, such as a company director). In relation to patents, an employer is the original owner of Intellectual Property created or developed by an employee in the course of their duties, or while undertaking duties specifically assigned to them, where the circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of those duties.

Students are not usually employees of the College, so the default position under English law is that students will own any Intellectual Property created or developed by them during the course of their studies.

Both academic and non-academic staff are employees of the College, so the default position under English law is that the College as their employer will generally own any Intellectual Property created or developed in the course of their employment, or whilst undertaking any activities specifically assigned to them. For academic staff, the College considers any invention related to their academic field might reasonably be expected to result from the carrying out of their duties, and therefore any related patents will be owned by the College.

Any variation to these default positions should be consistent with the Principles and Objectives of the Intellectual Property Policy laid down in Section 1 above.

#### **4. Student Intellectual Property**

In line with the default position under English law, the College does not generally claim ownership of Intellectual Property created or developed by students in the course of their studies.

The College does claim ownership of Intellectual Property created or developed by students in the following situations:

- Where the Intellectual Property in question is created or developed jointly with a member of College staff, or builds on or is an extension of Intellectual Property owned by the College.
- Where the College has agreed to licence or assign to a third party Intellectual Property created or developed by the student while the student is undertaking work sponsored or funded by the third party or the student is on an organised placement with the third party; or where the third party is otherwise making facilities, equipment, and/or Intellectual Property available to the student (and for the avoidance of doubt such arrangements would always be with the student's prior consent).
- Where the student is being partially or wholly-funded by a third party that requires the College to own Intellectual Property created or developed by the student as a condition of such funding.

It is the student's responsibility to confirm if and when they fall into any of the above categories. Students such as MA and PhD candidates whose work will be closely supervised by specific individual members of College staff are advised to discuss in advance with their supervisor(s) the ownership status of Intellectual Property in their work.

While the College does not generally claim ownership of Intellectual Property created or developed by students in the course of their studies, this is without prejudice to any claim the College may have to ownership of physical materials embodying such Intellectual Property (such as essays, assignments, or examination responses).

Irrespective of the ownership of Intellectual Property in any piece of work, students must ensure that their work is not supplied to any third party either directly or indirectly to be used for purposes that might constitute or assist with plagiarism. This includes not allowing their work to be submitted to any online source or repository of such work without the College's written consent, unless this is provided as a service by the College (e.g. *Turnitin*).

Students are responsible for ensuring that any third party Intellectual Property that is incorporated in their work is clearly identified in accordance with standard academic practice. For further details of the offence of plagiarism please see Goldsmiths' Assessment Regulations.

#### **5. College Licence under Student Intellectual Property**

Although the College does not generally claim ownership of Intellectual Property created or developed by students in the course of their studies, students grant the College an irrevocable, worldwide, royalty-free, non-exclusive, sublicensable licence under their Intellectual Property to undertake any of the acts otherwise restricted by copyright in a work, for all purposes which are in accordance with the College's Data Protection Policy and Guidelines, and the Enrolment Fair Processing Notice; or to which the student has otherwise provided their written consent.

## **6. Staff Intellectual Property**

In line with the default position under English law, the College is the owner of all Intellectual Property created or developed by the College's academic and non-academic staff in the course of their employment by the College or while undertaking duties specifically assigned to them by the College (whether through their contract of employment or otherwise), including, for academic staff, any patents related to their field of academic activity. This applies to all College staff irrespective of their nationality, or the country in which they are working.

For the sake of clarity the foregoing includes all Intellectual Property created or developed by a member of staff commissioned to undertake work in connection with any contract or agreement between the College and a third party, or in connection with any research grant, project or programme funded by the College or any third party. The College may require members of staff to execute documentation confirming they are aware of and will abide by this, and the general provisions of the College's Intellectual Property Policy, prior to the College submitting applications for research funding on their behalf.

Where a member of staff wishes the College to take over and assume responsibility for a pre-existing research grant, project or programme they may be required to execute documentation confirming they have the right to licence or assign to the College any pre-existing Intellectual Property in the research to enable the College to meet its obligations to the research funder. The College may also require any institution where the research had previously been based to execute corresponding documentation as a condition of the College taking over and assuming responsibility for the research grant, project or programme.

## **7. Individuals who are both a Student and a Staff Member**

Where an individual is both a student and a member of staff, the provisions of Section 4 of this Policy shall apply to any Intellectual Property they produce in the course of their studies, and the provisions of Section 6 of this Policy shall apply to any Intellectual Property they produce in the course of their employment. In the event there is any dispute over whether any piece of Intellectual Property was produced in the course of their employment or the course of their studies, the issue may be referred under the Intellectual Property Dispute Resolution procedure outlined in Section 13 below. Where it is ultimately impossible to determine whether a particular piece of Intellectual Property was produced in in

the course of their studies or in the course of their employment, the latter status and the provisions of Section 6 shall take precedence.

## **8. Definition of Researchers**

In this Policy the term “Researchers” refers to:

- Both academic and non-academic College staff.
- All students falling into one of the categories outlined in Section 4 (above) where the College is claiming ownership of Intellectual Property produced in the course of their studies.

## **9. Scholarly and Artistic Outputs**

As a derogation from and exception to the general principles above, the College does not generally claim ownership of copyright or design rights in scholarly or artistic outputs produced by Researchers such as:

- Personal lecture notes, seminar papers, essays or theses.
- Academic publications such as conference posters, articles or books.
- Course materials produced for internal College students.
- Examination questions, assignments or papers.
- Artistic works or works of exclusively aesthetic design.
- Musical works, sound recordings, films or broadcasts.

While the College does not generally claim ownership of copyright or design rights in such scholarly or artistic outputs, this is without prejudice to any claim the College may have to ownership of the physical materials embodying such scholarly or artistic works, nor to the College’s claim to ownership of other Intellectual Property embodied in such scholarly and artistic outputs (for example ownership of the Intellectual Property in any inventions described in an academic publication).

Where a Researcher has been specifically commissioned to produce scholarly or artistic outputs for the College (including its individual Departments), or where these are produced in connection with any contract or agreement between the College and a third party (including in connection with any student placement, research grant or project funded by the College or any third party funder), the College claims ownership of all Intellectual Property in such scholarly or artistic outputs including copyright and design rights. Where a member of College staff wishes to incorporate pre-existing and/or third party Intellectual Property in such scholarly or artistic outputs, they must discuss the ownership status of such Intellectual Property with the College in advance to ensure that appropriate permissions are in place.

Although the College does not generally claim ownership of copyright or design rights in scholarly and artistic outputs, the College is committed to open access. The College would always encourage Researchers (whether staff or students) to make the outputs of their research available through open access routes such as Goldsmiths Research Online (GRO) whenever this is ethically appropriate, not least as this is a condition of grants provided by UK Research Councils and many other funding bodies, and may be a requirement for research outputs to be considered for inclusion in future research assessment exercises such as the Research Excellence Framework.

## **10. College Licence under Scholarly and Artistic Outputs**

Although as outlined in Section 9 above the College does not generally claim ownership of copyright or design rights in scholarly and artistic outputs, Researchers grant the College an irrevocable, worldwide, royalty-free, non-exclusive, sublicensable licence under the Intellectual Property in such scholarly and artistic outputs to undertake any of the acts otherwise restricted by copyright in a work, including, but not limited to, for the purposes of:

- Re-use of materials for future course packs, either for College students or third parties (including for commercial sale).
- Inclusion in promotional materials for the College and on the College website.
- Enabling students to record lectures for the purposes of private study.
- Compliance with statutory information disclosure requirements, such as those under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (or similar or subsequent legislation or regulations).

Researchers may be required to execute documentation confirming the College's licence described above.

## **11. Commercial Exploitation of Intellectual Property**

All Researchers must inform the College if they create or develop Intellectual Property that is potentially capable of formal registration and/or commercial exploitation, by reporting this to their Head of Department or the Director of Enterprise (or their nominees). Researchers must keep all details of such Intellectual Property confidential until approved for release by the College in writing. For the sake of clarity, this includes not disclosing details of the Intellectual Property in any academic books, articles, essays or posters, or discussing such Intellectual Property in any public forum including seminars or conferences, without the College's advance written consent.

Where practicable the College will consult in good faith with relevant Researchers regarding any commercial exploitation of Intellectual Property, but the College retains the absolute right at its sole discretion to deal with College-owned Intellectual Property in any fashion whatsoever, including, but not limited to:

- Filing for any patent or other formal registration for the Intellectual Property.
- Taking any action in respect of infringement or alleged infringement of the Intellectual Property in any jurisdiction.
- Licensing or assigning the Intellectual Property to any third party.
- Forming a 'spin-out' company to exploit the Intellectual Property.
- Making the Intellectual Property freely available at no charge.

Where the College decides to exploit Intellectual Property through the formation of a spin-out company, the College shall determine at its sole discretion:

- Whether and on what basis any Researchers are invited to participate in the spin-out company.
- Whether participation is in lieu of any Researchers' right to receive a share of Net Income from commercialisation of Intellectual property as described in Section 12 below.
- All other terms and conditions applicable to the formation of the spin-out company.

The College may require Researchers to execute confirmatory assignments of Intellectual Property in favour of the College, including, but not limited to, for the purposes of reassuring potential collaborators or investors that the College has full title to such Intellectual Property.

Where Intellectual Property has been disclosed to the College and, after a reasonable period of time the College has decided not to proceed with the formal registration and/or commercialisation of such Intellectual Property, the relevant Researchers may request the right to proceed themselves. Any such requests shall be dealt with on an ad hoc basis by the Pro-Warden (Research and Enterprise) or their nominee. Where the College agrees to such a request, the College may at its sole discretion decide whether to license or assign the Intellectual Property to the relevant Researchers, and whether to impose further conditions on such license or assignment, including, but not limited to:

- i) Placing restrictions on the manner in which any commercialisation may proceed, including placing limitations on acceptable markets, products and/or customers;
- ii) Requiring that revenues derived from such commercialisation be shared with the College and/or relevant Departments on fair and reasonable terms (including potentially requiring payment of an initial lump sum or instalments to recoup costs incurred by the College in relation to the creation or development of such Intellectual Property, and/or the application for formal registration of such Intellectual Property);

- iii) Where the Intellectual Property is assigned, requiring that the College be granted a licence back under some or all of the Intellectual Property on such terms and for such purposes as the College determines in its sole discretion.

Where Researchers would like Intellectual Property they have created or developed to be made available on some form of open licence (such as open source software or creative commons licences) the College will consider such requests in good faith.

## **12. Revenue sharing arrangements**

In order to promote the aims and objectives of this Intellectual Property Policy, and, in particular, to help create and foster an atmosphere conducive to promoting entrepreneurial activity and external engagement, the College shall share any Net Income derived from commercialisation of Intellectual Property with the relevant Researchers.

For the sake of clarity the revenue-sharing arrangements in this Section 12 do not apply to revenues derived from consultancy work undertaken by Researchers, the distribution of which shall be governed by the College's Consultancy Policy in place from time to time.

For the purposes of this Policy, "Net Income" shall mean the total gross income derived from the commercialisation of Intellectual Property *less* direct costs associated with such commercialisation, including, but not limited to, the costs of applying for any formal registration for such Intellectual Property, and of taking any action in respect of infringement or alleged infringement of that Intellectual Property in any jurisdiction.

Net Income shall be distributed as follows:

- 50% to the relevant Researcher or Researchers.
- 25% to the relevant Department or Departments.
- 25% to the College.

Where more than one Researcher is involved in the creation or generation of Intellectual Property the distribution of their share of Net Income shall be a matter for them to determine between themselves. Where they cannot agree, the issue may be referred under the Intellectual Property Dispute Resolution procedure outlined in Section 13 below.

For the sake of clarity, academic or non-academic staff whose duties include responsibility for commercialisation of Intellectual Property shall not take the benefit of these revenue-sharing arrangements as a consequence of performing such duties. Any payments to such staff shall be at the sole discretion of the College.

The appropriate share of Net Income arising from the commercialisation of Intellectual Property will continue to be paid to Researchers who leave the College, and to Researchers' estates in the event of their death. The College shall use reasonable endeavours to maintain contact details for such Researchers or



representatives of their estates, but where despite such endeavours contact is lost for six consecutive months, the College may send notice to the last known address of the Researcher that the Researcher's entitlement may be reallocated. If the Researcher or a representative of their estate does not contact the College within a month after the date of such notice the College may, at its sole discretion, reallocate that Researcher's share of Net Income to any other relevant Researchers, or to the College's general funds.

The share of Net Income payable to Researchers pursuant to this Policy may be subject to tax, and the College reserves the right to deduct and account to the appropriate authorities in respect of any tax or other withholdings found due. If National Insurance Contributions are required to be made the College shall be entitled to deduct both employer and employee contributions. Researchers shall indemnify the College for any income tax, national insurance contributions, or any other taxes or withholdings, which may be found due from the College in relation to any share of Net Income already paid by the College to the Researcher.

### **13. Intellectual Property Dispute Resolution**

In the event of a disagreement concerning Intellectual Property under this policy, including any dispute about ownership of Intellectual Property or distribution of Net Income derived from the commercialisation of Intellectual Property, the Researcher or Researchers and the College shall first try to resolve the matter informally.

If the dispute cannot be resolved informally, the matter shall be referred for determination to an adjudicator to be agreed between the parties, or, if the parties are unable to agree on an adjudicator within thirty days of a written request by either party, to a committee appointed for these purposes by the Pro-Warden (Research and Enterprise) or their nominee. Any agreed adjudicator or appointed committee has sole discretion to determine the outcome of the dispute, and may impose any reasonable terms on the parties to the dispute. The decision of any agreed adjudicator or appointed committee shall be final, save in the case of manifest error.

Where it is determined that Intellectual Property is jointly owned by a Researcher and the College, this may be in lieu of the Researcher's right to receive a share of the College's Net Income from commercialisation of the Intellectual property as described in Section 12 of this Policy. Where it is further determined that the College shall take the lead in commercialising any such jointly-owned Intellectual Property the Researcher shall give the College authority to nominate an attorney to act on the Researcher's behalf to sign such documents and take any other action as the College reasonably requires in its sole discretion.

### **14. Formalities.**

Any current or former staff member or student shall take any action and execute any documentation reasonably requested by the College to give effect to any of the College's rights under this Policy, or to enable the registration by the College

of any Intellectual Property in any territory. The College shall pay any reasonable associated expenses.