



**UNIVERSITY *of* LIMERICK**  
O L L S C O I L L U I M N I G H

# Intellectual Property Policy

Approved by Governing Authority: 25<sup>th</sup> September 2015

## **1. Introduction**

### **1.1. University of Limerick as an Innovative Institution**

The pursuit of excellence in teaching, learning and research is core to the University of Limerick's (the "University") mission. From the outset, the implementation of this mission has been conditioned by the commitment to ensure that activities are relevant to Ireland's economic, social and cultural development. The University's focus on research and innovation is consistent with the national objectives set out in the relevant Government documents.

University research is a national resource. The focus of the University of Limerick Intellectual Property Policy ("this Policy") is on developing a positive culture of discovery and enterprise aimed at generating tangible benefits for the University, its researchers and the community at large, and contributing to the national knowledge economy.

### **1.2. Policy Objectives**

The primary objective of this Policy is to establish guidelines for the ownership, protection, processes and the professional management of intellectual property arising from the University's research activity. This Policy establishes guideline principles and practices for determining and safeguarding the interests of:

- inventor(s)/originator(s) of intellectual property;
- the University; and
- external organisations.

### **1.3. For the University Personnel**

The purpose of the Policy is to:

- establish a positive climate to encourage University Personnel to generate, identify and commercialise UL Intellectual Property;
- provide a mechanism to inform University Personnel of the necessity and the means of protecting Intellectual Property;
- provide support to University Personnel in the exploitation of UL Intellectual Property; and
- facilitate the establishment of new companies to commercialise UL Intellectual Property (University campus company).

### **1.4. For the University**

The purpose of the Policy is to:

- establish the ownership position clearly for UL Intellectual Property and unambiguously;
- encourage technology transfer in line with overall University and National objectives;
- create an innovative and entrepreneurial climate on campus;
- generate additional income to further support research;
- safeguard the academic, professional, legal, and financial interests of the University; and
- ensure compliance with Agency and Sponsor contractual obligations.

### **1.5. For External Organisations**

The purpose of the Policy is to:

- encourage mutually supportive relationships with the University in the creation and exploitation of intellectual property;
- stimulate interest in the University as a source of research expertise having economic potential;
- recognise the legitimate economic and commercial interests of external partners in the context of agreements entered into with the University; and

- facilitate a professional and pro-business interface between external organisations and the University.

## 2.0 Definitions

In this Policy:

'Creator' means any University Personnel responsible (whether alone, jointly with or in conjunction with others) for the creation of any UL Intellectual Property;

"Intellectual Property" includes any copyright, patent, invention, discovery, improvement, concept, idea, design rights, trade mark, service mark, brand rights, audiovisual or computer materials, database rights, know-how, trade secrets, confidential information (including the contents of laboratory note books or stored by electronic means), semi-conductor topography rights and all other intellectual property and rights of a similar nature, whether vested, contingent or future anywhere in the world, whether registered or not, or capable of registration or not, and, including all applications and the right to apply for any of the foregoing rights;

"IP Agreement" means any agreement granting commercial rights in UL Intellectual Property to a third party;

"IP Income" means cumulative cash payments received by the University as consideration under a valid IP Agreement; this includes licence execution payments, ongoing royalty payments, milestone payments, option payments, performance payments, assignment fees and any other cash payments that are made to the University in consideration of the grant or transfer of the commercial rights of the UL Intellectual Property; IP Income, however, excludes:

- any administration fees or reimbursement of costs that the University may seek to charge a third party for direct costs (e.g. legal costs, patent costs).
- any fees included within an IP Agreement for the provision of support services (e.g. knowledge transfer);

"Net IP Income" means IP Income less direct and apportioned overhead costs associated with the management and commercialisation of the relevant UL Intellectual Property and any related payment obligations entered into by the University with third parties or research funding agencies; overhead costs include all patent, insurance, professional fees and expenses and any other reasonable overhead costs;

'Publication' means putting the public in possession of an invention/ discovery by way of speech, talk, paper, drawing, photograph, printed work, tape, video recording or other electronic means, or any other disclosure given or distributed, except on a confidential basis; deposition of a thesis in the University Library constitutes "publication" and may prejudice patenting action or agreed secrecy unless appropriate provision is made for controlled access to the thesis;

'UL Intellectual Property' means Intellectual Property as described in paragraph 4.2 below;

'University Personnel' means any academic, research and other University staff member (full-time or part-time), post-graduate students in the course of their education at the University or any other persons, including adjuncts, consultants, emeritus personnel and Visitors; and

'Visitor' means any person visiting the University for the purposes of undertaking any work or research for or at the University.

### **3.0 Commercialisation**

- 3.1. The University is committed to managing and commercialising UL Intellectual Property in a manner which ensures optimum benefit to society, the national economy and the University, and provides financial reward and recognition to Creators and the University.
- 3.2. It is the responsibility of the Vice President Research to seek the most effective means by which UL Intellectual Property may be commercialised in accordance with this Policy and to that end the Technology Transfer Office is responsible for all negotiations, evaluation, marketing and licensing of UL Intellectual Property. The University will maintain a flexible approach to bringing UL Intellectual Property into commercial use. While each case will be considered individually the University will not generally assign title to UL Intellectual Property to external organisations. Exceptions to this rule must be approved by the Vice President Research.
- 3.3. In commercialising UL Intellectual Property, the University will be guided by international best practice the National Codes of Practice for Managing and Commercialising IP from Public/ Private Collaborative Research, the Funding Agency Requirements and Guidelines for Managing Research Generated Intellectual Property, and other relevant codes, guidelines and requirements.
- 3.4. The University will only engage in the commercialisation of UL Intellectual Property where it is satisfied that it has the appropriate right to do so. UL Intellectual Property is generally provided on an 'as-is' basis and without any expressed warranty or guarantee of performance. Any agreement for the commercialisation of UL Intellectual Property must operate to levels of risk management appropriate to the needs of the University.
- 3.5. In the normal course of events the University will not enter into agreements with respect to improvements to UL Intellectual Property which have yet to be developed.

### **4.0 Ownership of Intellectual Property**

#### **4.1. Ownership of UL Intellectual Property**

All ownership rights and title to UL Intellectual Property vests solely and absolutely in the University. University Personnel must, upon request by the University, execute all such documents, give such assistance, and do such acts and things as may in the opinion of the University be necessary or desirable to give effect to the foregoing and to this Policy generally. University Personnel must also waive any rights, including all rights in the nature of moral rights that they may have in respect of UL Intellectual Property to the extent deemed reasonable by the University.

#### **4.2. UL Intellectual Property**

- 4.2.1. This Policy applies to any Intellectual Property that is created, discovered, invented, conceived or first reduced to practice in whole or in part or caused to come into existence by University Personnel:
  - while undertaking normal, or specifically assigned, duties either when Intellectual Property could be reasonably expected to result from the carrying out of those duties; or
  - when using the University equipment, supplies, facilities or the University assets, and where the use of such is important to the creation of the Intellectual Property, or
  - when using the University's confidential information, trade secrets, know-how or any UL Intellectual Property; or

- in relation to any work performed for the University (including work carried out pursuant to any third party funded research programmes).

Unless otherwise agreed, this Policy does not apply to any Intellectual Property created by undergraduate students in the course of their undergraduate education.

- 4.2.2. Under current legislation, in broad terms, the University automatically owns certain types of Intellectual Property created by University employees in the course of their employment. However in recognition of the unique status of a university and acknowledging a long standing academic tradition, the University does not assert ownership of Intellectual Property that the University deems to be of a non-commercial nature. These include pedagogical works, scholarly publications, books or artistic works of University Personnel, regardless of the form of expression.

This exception does not apply to:

- UL Intellectual Property that is created by University Personnel pursuant to a contract between the University and a third party, unless there is a written agreement to the contrary; or
- copyright in software or database rights; and
- UL Intellectual Property used in the delivery of University educational programmes in electronic format; in those circumstances, the University reserves the right to use such material for the delivery of any educational and training programmes on a perpetual, royalty-free, non-exclusive basis.

### **4.3. Third Party Research, Contract Work and Consultancy**

- 4.3.1. The University recognises that the competence of University Personnel may be further enhanced by participation in activities involving collaboration with industry, and recognises that such collaboration fosters the transfer and application of knowledge, and contributes to national economic development.
- 4.3.2. It is University policy that, in return for the prior knowledge, know-how and experience that University Personnel bring to third party research or consultancy projects, the University should share in any benefit arising from commercial exploitation of UL Intellectual Property resulting from that research, or other work, carried out by the University on behalf of the collaborating organisation.
- 4.3.3. Ownership of the Intellectual Property arising from such work will be subject to (a) the provisions regarding ownership as are contained in the relevant contract between the collaborating organisation and the University, and (b) the Guidelines as set out in the National Codes of Practice, the Funding Agency Guidelines for the Management and Commercialisation of Intellectual Property and other relevant codes, guidelines and requirements.
- 4.3.4. The University will generally seek to employ a standard contract for all such work; deviations in contract formats may be used on the basis of particular circumstances, taking into account the overall interests of the University, the collaborating organisation and/or incorporating guidelines that may be laid down from time to time by the University or other agencies. While each case will be considered individually, the University will not generally assign title to UL Intellectual Property to external organisations. Exceptions to this rule must be approved by the Vice President Research.

### **4.4. Private Consultancy**

- 4.4.1. The University permits members of the academic staff to undertake private consulting in accordance with the Policy for Private Consulting and External

Commercial Work. No UL Intellectual Property may be used in the execution of private consultancy assignments.

#### 4.5. Relinquishing of rights

- 4.5.1. Where the University decides not to commercialise or otherwise use or exploit UL Intellectual Property, and where it is legally able to do so, it will consider any request, from the Creator(s) to obtain ownership of the relevant UL Intellectual Property Right. If the University agrees to any such request then the terms of any transfer of ownership will be subject to the University receiving a fair consideration arising from any successful commercialisation of the UL Intellectual Property. In addition, the Creator(s) concerned will be required to reimburse the University for costs and expenses incurred in relation to the establishment, registration and maintenance of such UL Intellectual Property as is deemed in the opinion of the University to be necessary at such time of disposal. Notwithstanding the foregoing, the University will be free to dispose of the UL Intellectual Property as it sees fit.

### 5.0 Income Distribution to Creator(s)

- 5.1. In general terms it is intended that (but always subject to the University's discretion) the University will share Net IP Income to promote the creation of economic value from research results. Where the University elects to distribute Net IP Income it will do so in accordance in the manner set out in section 5.2.
- 5.2. Net IP Income will be distributed to Creators as follows:

Table 1: IP Agreements signed post the date of approval of this Policy by Governing Authority:

| Distribution to  | Creator(s) |
|------------------|------------|
| First €25k       | 100%       |
| €25,001-€250,000 | 50%        |
| >€250,000        | 30%        |

Table 2: IP Agreements signed previous to the date of approval of this Policy

|                            |     |
|----------------------------|-----|
| Net IP Income              |     |
| Distribution to Creator(s) | 50% |

- 5.3. Where the University receives shares in a company (campus company or otherwise) in lieu of any cash payment due under an IP Agreement, then such consideration will be allocated a value by the University at that time for the purposes of any subsequent calculation of IP Income. The timing of the distribution of benefits under such arrangements will be at the absolute discretion of the University. All shares will be owned by the University and any distributable net proceeds, received by way of dividend, or realised on disposal of the shares by the University in excess of the allocated value will not be IP Income. The University will have absolute discretion in the disposal of any shares or equity interest held in a company or any income derived therefrom.
- 5.4. Where the University has received a shareholding under conditions set out in clause 5.3 and where at such time the Creators hold a significant founding shareholding (typically 5% or greater) in the relevant company, then such Creators will be deemed

to have already received a benefit and, in those circumstances, any benefit which might otherwise be distributed under this Policy will be allocated to the University.

- 5.5. For the avoidance of doubt, any shares or equivalent securities issued to the University which, in the opinion of the University, do not form part of the consideration in an IP agreement will not be considered as falling under this Policy.
- 5.6. Where several Creators collaborate in the creation of an item of UL Intellectual Property, the Net IP Income in respect of that item of UL Intellectual Property will be distributed in proportion to their respective intellectual contributions to that UL Intellectual Property. The respective contributions of the Creators must be notified to the Technology Transfer Office by way of an executed Inventor Share Agreement. If the Creators concerned do not agree on their respective contributions within such reasonable time period as may be stipulated by the University, then the University will be entitled to distribute the Net IP Income between the Creators in such proportions as it may, in its sole and absolute discretion, deem appropriate.
- 5.7. Where one or more items of UL Intellectual Property are the subject of a single IP Agreement, the Net IP Income from that IP Agreement (prior to its distribution to the Creators in accordance with this Policy, in particular section 5.6) will be allocated as between those items of UL Intellectual Property in such proportions as may be agreed between the Creators concerned. If the Creators concerned do not agree on such proportionate allocation within such reasonable time period as may be stipulated by the University, then the University will be entitled to allocate the Net IP Income between the relevant items of UL Intellectual Property in such proportions as it may, in its sole and absolute discretion, deem appropriate.
- 5.8. All Net IP Income will be paid to Creators in accordance with prevailing tax, financial and auditing requirements and will be subject to statutory and other payroll deductions (e.g. employer PRSI and pensions). Responsibility for distribution lies with the Finance Office following appropriate instruction by the Technology Transfer Office. It is intended that the distribution of Net IP income will generally be carried out within 90 days of receipt of such income. Net IP income distributions to University Personnel will continue to be paid even though s/he may have left the University.
- 5.9. Unless otherwise determined by the University in any particular case, the distribution of Net IP Income after the Creator share has been distributed will be in accordance with the following allocation:
  - Distribution of Net IP Income from €25,001 to €250,000 inclusive:
    - 30% of Net IP income to be distributed between the respective Institutes, Centres and Departments and Faculties of the Creators at the discretion of the Vice President Research but to be used in furtherance of University research activities
    - Balance to the University patents costs and TTO led innovation activities
  - Distribution of Net IP Income greater than €250,000
    - 40% of Net IP income to be distributed between the respective Institutes, Centres and Departments and Faculties of the Creators at the discretion of the Vice President Research but to be used in furtherance of University research activities
    - Balance to the University patents costs and TTO led innovation activities

## **6.0 Disclosure and Assignment of Inventions**

- 6.1. All University Personnel are required to disclose to the Technology Transfer Office all research results with potential commercial application and which arise, or likely to arise, from their work at the University. Such disclosures must be made in writing as soon as reasonably possible and submitted in a manner set out by the Technology Transfer Office.
- 6.2. Subject to any contrary conditions that may exist, (e.g. in respect of a sponsored or other funded research contract) all Creators must assign (using an assignment agreement provided by the University) all rights in their work to the University.

## **7.0 Publication and Confidentiality**

- 7.1. It is University policy to encourage University Personnel to discuss and publish the results of research as soon, and as fully, as may be reasonable and possible.
- 7.2. Creators of UL Intellectual Property should exercise great caution with respect to any Publication. Premature Publication of the details of an invention/discovery may make it impossible to seek later patent protection. In any case of doubt, as to whether to publish or not, the advice of the Technology Transfer Office should be sought.
- 7.3. University Personnel engaging in University research activities must manage confidential information (internal or external) in accordance with contractual obligations and any additional guidelines established by the University.

## **8.0 Record Keeping/ Laboratory Note Books**

- 8.1. It is important that University Personnel understand that their records may be subject to legal scrutiny in the securing of protection for Intellectual Property (e.g. patent protection). This requires the maintenance of accurate and contemporaneous records of the steps leading to their invention/ discovery. Accordingly, data generated in the course of research should be held in laboratory note books (guidelines for which will be set out by the Technology Transfer Office) or in an electronic format, suitably backed-up.
- 8.2. The University requires that such data be securely archived upon completion of a project. The period of retention will depend on the requirements of individual funding agencies, and the terms and conditions of contracts of sponsoring bodies.
- 8.3. Records should be dated, and regularly signed by the Principal Investigator and witnessed by Head of Department, Centre Head/Director or Institute Director as appropriate.

## **9.0 Procedures**

- 9.1. Responsibility for the implementation and administration of this Policy rests with the Vice President Research and in particular with the Technology Transfer Office.
- 9.2. Procedures for the management of UL Intellectual Property will be set out by the Technology Transfer Office. These procedures may be revised from time to time to reflect experience gained in the operation of this Policy.
- 9.3. Procedures for the formation of University Campus Companies will be set out by the Technology Transfer Office. These procedures may be revised from time to time to reflect experience gained in the operation of this Policy.
- 9.4. University Personnel requiring clarification on any issue should seek the assistance of the Technology Transfer Office in the first instance.

- 9.5. In the event of a dispute between the Creators and the University as to his/ her/ their respective rights, an appeal may be made in writing to the President of the University, who will make a final decision on behalf of the University after seeking the advice of the Vice President Research, and such other person/ body he/ she deems appropriate.

#### **10.0 Miscellaneous**

- 10.1. This Policy takes effect as and from the date of approval by the Governing Authority.
- 10.2. This Policy supersedes all prior written and oral arrangements, understandings and agreements with respect to its subject matter, including all prior policies and practices of the University with respect to UL Intellectual Property all of which are hereby terminated and no longer have any effect. No Creator or University Personnel member is entitled to rely on any right or entitlement under any such previous policy or practice.
- 10.3. The University reserves the right to amend this Policy from time to time.
- 10.4. This Policy does not confer any employment rights or entitlements on University Personnel. The rights and obligations of the University Personnel under the terms of their office, employment or engagement with the University are not affected in any way by this Policy.

#### **11.0 Relevant Policies and Administration Processes**

- 11.1. 301.002 Intellectual Property Management Process (TTO QMS Process).
- 11.2. 301.001 Campus Company Process. (TTO QMS Process).
- 11.3. Policy for Private Consulting and External Commercial Work – UL approved policy.

**Revision & Approval Log**

Revisions managed by Director, Technology Transfer Office.

| <b>Rev No.</b> | <b>Date</b> | <b>Revised By</b> | <b>List of Revisions</b>                            | <b>Approved Sign &amp; Date</b>                        |
|----------------|-------------|-------------------|---|--|
| 0              | 27/10/2007  | TC                | New Document  | Executive Committee<br>14th Nov 2007                   |
| 1              | 2509/2015   | PD                | Revise Income distribution<br>Full document redraft | Governing Authority<br>25 <sup>th</sup> September 2015 |