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**LSBU**

# Intellectual Property (IP) and Commercialisation Policy

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# Contents

1. Introduction .....	3
2. Scope.....	3
3. Roles and Responsibilities.....	3
4. Ownership of Intellectual Property.....	5
5. Student IP.....	6
6. Confidentiality.....	7
7. Disclosing new innovations.....	7
8. Commercialisation .....	8
9. Revenue Sharing Scheme .....	9
10. Apportionment amongst Inventors.....	10
11. Leaving employment of the University.....	10
12. Death .....	10
13. Payment of Royalties.....	10
14. Assignment to Inventor.....	10
15. Definitions .....	11

## **1. Introduction**

This policy provides a framework for the assessment, management and commercial development of intellectual property arising from the activities of all staff at London South Bank University (LSBU).

The policy states that intellectual property (IP) generated at LSBU is owned by LSBU except in particular identified circumstances. It describes when IP is likely to arise and how it can be commercialised.

The policy takes account of the need to publish research and supports staff in this process. The policy covers situations involving honorary or visiting academics to LSBU.

Finally, the policy describes methods of IP commercialisation, and sets out the revenue sharing model for successful commercialisation.

- 1.1** London South Bank University regards the creation of intellectual property as a core objective which it sees as crucial to the development of knowledge-creation, scholarship and learning. The University maintains its duty to develop policies and support services which create the best possible environment for intellectual property to be transferred into practical use.
- 1.2** The protection and appropriate commercialisation of intellectual property at the University is in the interest of everyone at LSBU. There is real potential to attract additional income for staff, students and the University by commercialising intellectual property.
- 1.3** The central features of this philosophy and responsibility are to create an effective, efficient, and a transparent process which can:
  - evaluate and protect the intellectual property, and then decide on the most appropriate arrangements for its transfer into use; and
  - arrange for sharing any commercial returns from commercialisation of Intellectual Property which provide rewards to the originators, the School and the University; and
  - use an approach which is entirely compatible with publishing, collaborations and research in the pursuit of excellence.

## **2. Scope**

London South Bank University's IP and Commercialisation policy provides a framework for assessment, management and value creation of IP generated by LSBU staff and students, including any persons that were LSBU staff at the time that the IP was created.

## **3. Roles and Responsibilities**

- 3.1** All Staff and students have responsibility for identifying and supporting the management and security of Intellectual Property generated through their work and activities at LSBU and should have regard to the Government's and University's guidance relating to Trusted Research.

- 3.2** The Provost has the overall responsibility for this policy but has delegated day-to-day responsibility for overseeing its implementation to the Pro Vice Chancellor (PVC) for Research and Innovation (R&I).
- 3.3** The Knowledge Exchange and Innovation team is responsible for advising on the protection and management of IP and to support Research and Innovation Services (RIS) to generate income via collaborative opportunities.
- 3.4** The Knowledge Exchange and Innovation team is responsible for supporting opportunities for training and development of LSBU Staff in their knowledge and understanding of IP.
- 3.5** The Director of Research and Innovation Services is responsible for the overall management and governance structures that support the promotion and protection of LSBU's IP.
- 3.6** Research and Innovation Services are responsible for working with Schools and inventors to identify and plan the required technical and commercialisation routes for the development of Intellectual Property. They are also responsible for engaging and negotiating with potential commercial partners to ensure optimal further development and return for the University.
- 3.7** The Knowledge Exchange and Innovation team is responsible for working with, academics, professional service groups (PSG), and Executive members to facilitate the delivery of LSBU's commercial-facing intellectual property and research activities by exploiting its innovations through spinouts, spin-ins, licensing & royalties, and commercial collaborations. This involves identifying opportunities, scoping potential, and preparing business cases, managing the IP and business process to agreed outcomes.
- 3.8** Associate Deans for Research and Enterprise (ADRE) are responsible for the implementation of this policy at School level in addition to supporting the decision to progress School related IP opportunities.
- 3.9** Associate Deans for Research and Enterprise are responsible for approving Intellectual Property for technical and commercialisation support by Research and Innovation Services. They are also responsible for the Schools Intellectual Property budget.
- 3.10** Staff who have created new IP are the expert on the invention and their knowledge is crucial to the success of IP generation, IP protection and IP commercialisation at LSBU. Staff who have created new IP are responsible for registering the innovation with South Bank Innovation via the completion of an Invention Disclosure Form. If their School agrees to support the protection and development of the innovation, staff are responsible for engaging with the commercialisation plan agreed with Research and Innovation Services.
- 3.11** The Director of Research and Innovation Services (or nominee) and the University Solicitor will review this procedure at least every two years to ensure that its provisions continue to meet our legal obligations and reflect best practice.

## **4. Ownership of Intellectual Property**

The Patents Act 1977 (as amended), the Copyright, Designs and Patents Act 1988 (as amended), the Registered Designs Act 1949 (as amended), Regulation on Community Designs (6/2002/EC) and the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) are several pieces of legislation that together make it clear that IP, generated by an employee during the course of their normal duties, belongs to their employer. The University will undertake to protect commercially important IP and seek its commercial exploitation for the benefit of staff, students and the University. Net proceeds from commercialisation will be distributed between the inventor(s) and the University on a fair and equitable basis as detailed in this policy.

**4.1** Intellectual property is a property right and can be transferred much like any other type of property, for example, by sale or assignment. It is important to realise that the owner of IP may not necessarily be the person who created it in the first place.

**4.2** Exceptions to full University ownership need to be considered when IP is created during a collaborative project with other organisations and when external funding determines ownership of IP. In these cases, staff are required to work with the University Legal team to develop and review contracts and/or licences and consider suitable ownership arrangements.

### **4.3 Teaching Materials**

**4.3.1** The copyright in teaching and learning materials whether written or electronic, including aids to teaching produced by staff in the course of their employment for the purposes of the curriculum or a course run by the University and produced, used or disseminated by the University belongs to the University. This includes the intellectual property of any recordings made by it or on its behalf including, please refer to the LSBU [‘Lecture Capture Policy’](#) for further guidance. However, the copyright in any material produced by staff for their personal use and reference shall belong to that member of staff.

### **4.4 Scholarly Materials**

**4.4.1** The University waives its IP rights in Scholarly Materials (as defined in the glossary) produced by Staff.

**4.4.2** The University reserves the right to use any Scholarly Materials for purposes such as teaching, research and general internal use if deemed appropriate, subject to the University’s obligation to respect the moral rights of the staff member in relation to such Scholarly Materials.

### **4.5 Materials arising from Research**

**4.5.1** Copyright in reports and other material arising from research will belong to the University or to a funding body or other collaborator depending on the terms of the contract.

### **4.6 Financial & Administrative Materials**

**4.6.1** All records, documents and other papers (including copies and summaries thereof) which pertain to the finance and administration of the University, and which are made by staff in the course of their employment, are the property of the

University and the copyright in all such original records, documents and papers shall at all times belong to the University.

#### **4.7 Honorary Employees**

Academics or researchers who have an honorary association with the University but are not employed by the University are required to transfer any IP they create in the course of their honorary activities to the University, subject to the terms and conditions of their honorary contract. Such individuals will be treated as if they were University employees for the purposes of sharing revenue. This includes visiting academics and individuals with honorary appointments in the University.

### **5. Student IP**

As a general principle, LSBU recognises the student as owner of any IP they produce while a registered student of LSBU. This principle may be subject to variation as described below:

#### **5.1 Postgraduate Research Students**

- 5.1.1 As a precondition of registration for their research degree (as stated in the Academic Regulations), all research students are required, prior to or at the time of enrolment, to sign agreements which will assign, or will oblige them in the future to assign, their rights in any IP arising from their studies to the University. Upon assignment, the University will own all IP developed by research students relating to their studies unless the University has entered into an agreement whereby all or a portion of the rights are owned by an external sponsor.
- 5.1.2 If the IP generated by research students is commercialised, the student inventor will be treated as a member of staff for the distribution of net income. Should the University not wish to exploit the IP generated during the course of the research degree, the IP shall be reassigned back to the research student at the end of his/ her studies. This is subject to any obligations of confidentiality assumed by the University and/or if requested the research student in relation to the IP.
- 5.1.3 The owner of the copyright in the thesis will be the student. The student shall seek guidance and approval from their Academic Supervisor initially for publication in books or articles. If the student is sponsored by an external party, guidance and approval for publication should also be sought from the external party.
- 5.1.4 Should the content of the thesis relate to any potentially commercial IP then publication of the thesis will be delayed until appropriate IP protection is in place. This should be discussed and agreed by the student's Academic Supervisor, the London Doctoral College and Research and Innovation Services.
- 5.1.5 The University reserves the right to be granted a non-exclusive royalty free licence by the student for use of their thesis for non-profit purposes such as teaching, research and general internal use if deemed appropriate subject to the University's obligation to respect the moral rights of the research student

in relation to such copyright material.

## **5.2 Externally sponsored work**

5.2.1 Students may need to assign ownership of IP generated by them, in circumstances where the activity they are involved with is funded by or otherwise benefits from the resources of a third party. The need for an assignment will be determined by LSBU having regard to the terms of any relevant contractual/grant arrangement(s) in place (or envisaged) with the third party. This includes (by way of example only) any research grant, studentship, collaboration, or placement agreement governing the relevant activity. Arrangements in relation to any assignment of IP should be put in place prior to the commencement of the project.

## **5.3 Non-research students**

Non-research students, including undergraduates and postgraduates on taught courses, own the IP that they create except in the following circumstances:

### **5.3.1 Students who create IP jointly with a member of staff under a University project.**

Students must assign their IP to the University. In cases in which the student who is working on a University project makes a significant contribution to the inventive process, the student will be granted the same rights as any employee inventor as set out in this policy.

### **5.3.2 Students working on a placement project or external project involving ideas and funding from an external party.**

In these circumstances, students may be required to assign their IP to the University or the external party. The ownership of any IP in cases of placement projects or externally funded projects will be determined by the contract with the external party. The external party/placement provider will most likely own the IP in these situations and students should be advised accordingly.

## **6. Confidentiality**

### **6.1 Professional Best Practice**

Staff should take all necessary steps to keep confidential any potentially exploitable IP and prevent public disclosure of any invention of creative work arising from their employment. If it is necessary to disclose confidential information, advice and guidance should be sought from the Knowledge Exchange and Innovation team in advance of disclosure. As research publications are important to both the researcher and the University, every endeavour will be taken not to delay publication more than is necessary to ensure protection of the IP.

## **7. Disclosing new innovations**

### **7.1 Invention Disclosure**

Staff and students must disclose new potentially exploitable IP to the University prior to any public disclosure using the LSBU Invention Disclosure Form (IDF) available through the Knowledge Exchange and Innovation (KE&I) team.

The Invention will be assessed for patentability or other protectable means with the inventor and if appropriate, protection will be initiated. The Inventor will be involved in the decision which may be impacted by publication needs and commercial potential. Please contact the KE and Innovation team should you need advice in relation to the IDF.

## **7.2 Evaluation of Intellectual Property**

The KE and Innovation team working with colleagues from RIS will review the Inventive work for commercial potential against a matrix of criteria including:

- Prior Art
- Strength of support for creative team
- Market for potential products, narrow or wide applications
- Market competition
- Cost of development for commercialisation
- Collaborative and licensing opportunities
- Exit strategy
- Benefits to the University – tangible and intangible

## **8. Commercialisation**

### **8.1 Revenues from Licence Royalties**

Where LSBU IP is licensed to a third party, Research and Innovation services will be responsible for negotiating and securing the most profitable commercial arrangement available. Net revenues (after patent and related costs, professional and legal advice, marketing costs, etc. have been covered) from licences/royalties will be distributed as described in section 8.

All commercial matters relating to IP and commercialisation are managed through South Bank University Enterprises Limited (SBUEL). SBUEL is the legal entity wholly owned by LSBU and has responsibility for the management of consultancy, investments, equity holdings and license agreements that relate to start-up businesses, IP, and technology transferral.

### **8.2 Creating Spin-Out Companies**

In some cases, the best route to commercialisation is for the Inventor to create a spin-out company. In this case, the Inventor will be required to submit a business plan which will be reviewed and agreed by Research and Innovation Services and the LSBU IP and Commercialisation Board. SBUEL will hold up to 20% equity in the spin-out company.

The University will take ordinary shares and will be diluted along with other founder shareholders as investment comes into the company.

### **8.3 Licensing to Spin-Out Companies**

For most spin-out companies the University will seek to negotiate licence terms to provide the venture with access to the IP it needs to develop the business and raise finance. The



licence will generally include royalty provisions and terms for assignment of the intellectual property based on the company meeting agreed milestones.

#### **8.4 Directorships in Spin-Out Companies**

SBUEL and the University will be party to Shareholders Agreements from the spin-out company and will seek non-executive directorships in the venture. Staff and/or students may also participate as directors and SBUEL recommends each individual considering this role gains legal advice on the responsibilities associated with private limited company directorship.

#### **8.5 Secondments to Spin-Out Companies**

In the event that an individual intends to work for the spin-out venture then secondment arrangements would need to be put in place by the School and Human Resources. Under this arrangement the company will reimburse the University for the individuals time spent in the business.

#### **8.6 Use of University Resources by Spin-Out Companies**

In the event that a spin-out company needs access to University facilities then this will require arrangement via Research and Innovation Services and the value of such access will be negotiated. Use of University Resources may count as 'in-kind' investment into the spin-out company and will be considered as a repayable loan or an entitlement to share options.

### **9. Revenue Sharing Scheme**

- 9.1** The successful commercialisation of University-generated IP will usually result in the University receiving a royalty income. This may be either as a lump sum or as a stream of royalty income over a period of time.
- 9.2** SBUEL has a standard scheme for the apportionment of its royalty income which reflects the involvement of the individuals concerned, the School and SBUEL.
- 9.3** The University must recover its costs – examples of such costs include IP protection costs, professional and legal advice, promotional and marketing material, access and use of University facilities and resources.
- 9.4** After costs have been recovered, net revenues from licences / royalties will be distributed as follows for any licensable IP:

<b>Net Revenues (Cumulative)</b>	<b>Inventor(s)</b>	<b>School</b>	<b>SBUEL</b>
<b>First £20K</b>	80%	10%	10%
<b>All revenue above £20k</b>	50%	25%	25%

- 9.5** Inventors will not receive a revenue share if the IP is licensed into a spin-out company of which they are a director.
- 9.6** Where the IP is licensed to a third party, Research and Innovation Services will be responsible for negotiating and securing the most profitable commercial arrangement available.

## **10. Apportionment amongst Inventors**

In circumstances where more than one Inventor is involved, responsibility for agreeing the division amongst the inventors lies with those individuals.

Joint Inventors must agree apportionment prior to any IP protection being filed or commercialisation support being provided by the University.

Advice can be sought from the Knowledge Exchange and Innovation team.

In the event of a dispute which cannot be resolved by mutual discussion amongst the Inventors the protection and commercialisation of the IP will not be supported by the University.

## **11. Leaving employment of the University**

Cessation of employment with the University will not affect an Inventor's right to receive a share of income. It is the responsibility of the inventor to inform Research and Innovation Services of their forwarding address and contact details.

## **12. Death**

In the case of the death of an Inventor, who is due revenue payments, such revenue payments will be payable to the estate of the deceased.

## **13. Payment of Royalties**

The Inventor's share of income will be paid via electronic bank transfer (by preference) or cheque. It is the responsibility of the recipient to ensure that they notify their local tax office or HMRC.

## **14. Assignment to Inventor**

**14.1** Should LSBU decide it does not wish to proceed with developing and commercialising of the IP, and if requested by the Inventor(s), LSBU will assign ownership of the invention and the IP to the Inventor(s).

**14.2** Once assignment to the Inventor(s) is agreed and transacted, they will have responsibility for any country specific assignments and for maintaining the IP protection.

**14.3** In such a scenario where IP is assigned back to the Inventor which is then successfully commercialised, the Inventor(s) will reimburse expenses previously incurred by the University, SBUEL and any other of the University's subsidiary companies for the IP

protection and development, from the income generated by the inventor(s) or done on their behalf.

## 15. Definitions

Certain terms are used in the LSBU IP Policy for Staff that have specific meanings, and they are defined in this section. These definitions do not necessarily conform to customary usage.

**Affiliate** means any other individual who has a contractual link with the University including (but not limited to), a visiting or honorary academic, a visiting postgraduate student or an academic on sabbatical.

**Assignment** means the transfer of Intellectual Property rights held by one party (the Assignor) to another party (the Assignee).

**Background IP** refers to any information, techniques, know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) that are already owned by a party when entering into an agreement with another party. This is especially applicable when entering into research or enterprise collaborations.

**Contributor** refers to a person or persons that have contributed to the development of a patentable innovation. By the requirements of the Patents Act 1977, their contribution does not qualify them to be named as an inventor on a patent application as they were not the 'actual deviser of the invention'. A contributor may be a person or persons who builds or tests the invention after the idea has been conceived; a person who supervises the project but does not contribute to the inventive concept; a person who writes up the results or publishes a paper. Contributors to an innovation may still be rewarded by LSBU.

**Commercialisation** means any form of exploitation of IP including assignment, licensing or the disposal of any interest, whether in return for cash or payment in-kind or any other form of value.

**Foreground IP** means any information, techniques, know-how, software, results, inventions and other Intellectual Property identified or first reduced to practice or writing in the course of a Project. This is especially applicable as a result of a research or enterprise collaboration.

**Intellectual Property (IP)** means any form of original creation resulting from the labours of an individual; a group of individuals or an organisation. The outcomes from research and enterprise activities can lead to the creation of new and original works that may have the potential to be protected and generate value through seeking commercial opportunities. Examples of original creations could be new software, new materials, a new health product or a new way of manufacturing a product; as well as a new play or film.

**Intellectual Property Rights (IPR)** refers to specific legal rights which protect the owners of IP from others using it without their permission. They are:

- Patents
- Copyright
- Design Rights
- Trade Mark Rights

- Trade Secrets
- Know-How

**Patents** protect any new and inventive product, device, composition or process for up to 20 years from filing a complete patent application. To be patentable, the subject matter must be new, have an inventive step and be capable of use in industry. It must also have "technical character" meaning it must solve a particular technical problem. In Europe and the UK, there are some exclusion from patentability such as ideas, theories, discoveries, thoughts, purely financial, commercial or mathematical methods, games, computer programs, ways of presenting information and methods of treatment, diagnosis or surgery. To gain an IP Right through Patents, the innovation must be registered by application and fees paid in the relevant territories.

**Copyright** protects any original works such as original literary works (tables or compilations, computer software programs and databases), dramatic works (dance or mime), musical works (music exclusive of any words or actions) and artistic work (graphic works, photographs, sculptures, collages irrespective of artistic quality, works of architecture and works of artistic craftsmanship), sound recordings, films, broadcasts and typographical arrangements of published editions. Copyright arises automatically and does not require an application to be registered.

**Design Rights** generally protect the external appearance of a product resulting from the features such as the lines, contours, colours, shape, texture and/or materials of the product or its orientation. Under UK design law, design rights can be formally registered for up to 25 years, giving legal protection against copying the actual design or any design similar in appearance. The design must be new and have individual character. Some designs may also attract automatic design rights which do not require any formal registration. These designs must be original (i.e. not copied) and not common place. They generally protect 3-dimensional aspects of a design product only. These automatic rights can last for up to 10 years from the date of first marketing the design or 15 years from when the design is first recorded in a design document or an article is made to the design. To gain an IP Right through Design Rights, an application must be registered and fees paid in the relevant territories.

**Trade Mark Rights** protect names, logos, jingles, slogans, shapes of goods or packaging. The mark must be capable of being represented in the register in a manner which enables the registrar and other competent authorities and the public to determine the clear and precise subject matter of the protection afforded to the proprietor, and of distinguishing the goods and services of one undertaking from those of other undertakings. Trade marks last for 10 years but can be registered for an indefinite period of time if they are renewed. Long term use of unregistered trade marks may also be protected under the UK common law of "Passing off" which protects the goodwill and brand in a business and is used as an alternative remedy to trademark infringement. To gain an IP Right for a trademark an application and fees must be paid in the relevant territories.

**Trade Secrets** are an intellectual property right on confidential information which may be sold or licensed. They will usually enable an organisation to have a competitive edge over competitors or would-be competitors. To qualify as a trade secret the information must be commercially valuable; be known only to a limited group of people and reasonable steps

have been taken by the rightsholder to keep the information secret such as through the use of confidentiality agreements amongst employees. Some research and enterprise activities may generate innovations that are so advanced that there is no market for them yet or the market is not ready – in such situations keeping an innovation a trade secret could be a good option. By definition, trade secrets do not need to be registered.

**Know-How** is a type of intellectual property right that can form a valuable part of licensing or transferring of intellectual property to another organisation or person. Know-How is defined as technical information, practical knowledge, skills and techniques that enable an organisation to do something such as develop a new product. Knowledge of how to create or do something could be acquired over a long period of time within an organisation and the accumulated knowledge gives the organisation the ability to create a product. Examples of information that could form a package of know-how are data, the results of tests and trials and reports. Know-How does not need to be registered but staff should take steps to keep data and related information secure.

**Inventor(s) (Definition 1)** means any person or persons who has invented something or whose job is to invent things. . The term is used in its widest sense to capture creators of innovations in health, business, law and the arts sector. An inventor can be any member of staff who has created something new and innovative.

**Inventor(s) (Definition 2)** Under the Patents Act 1977 ‘inventor’ is also given a legal definition meaning the ‘actual deviser of the invention’. Inventors must be named on patent applications and only staff that have contributed to devising the inventive concepts can qualify as an ‘inventor’. Staff that carried out tests, followed instructions of a supervisor or published a paper may qualify as ‘contributors’ to an innovation but not as an inventor. Contributors to an innovation can still be rewarded by LSBU.

**Licence** is an expressed legal agreement where the owner of an intellectual property right (Licensor) authorises another party (Licensee) to use the intellectual property.

**LSBU and University** means London South Bank University

**Non-disclosure Agreement** is a contract by which one or more parties agree not to disclose confidential information that they have shared with each other as a necessary part of doing business together. This is also sometimes referred to as a confidentiality agreement.

**Project** means a planned piece of collaborative research and/or commercialisation work over a fixed period of time and with an intended outcome. The results of the Project could mean that new IP has been created.

**RIS** means Research & Innovation Services

**Research Materials** means materials, whether in written or electronic form, that arise from carrying out research activities but excluding any materials that are considered Scholarly Works and Teaching Materials.

**Research Results** means the results arising from an individual’s or group’s research including details of any IP, results, data or source code.

**Postgraduate Research Students** means any full-time or part-time student undertaking a research degree regardless of whether the student receives financial support from the University, from outside sources or who is self-funded. Under the University's Regulations the research degree is defined as any of the following: MRes, MPhil, MD, PhD, PhD by Published Work, DLitt, DSc or any other doctoral thesis including Professional Doctorates.

**SBUEL (South Bank University Enterprises Limited)** means the legal entity wholly owned by the University which has responsibility for the management of consultancy, investments, equity holdings and license agreements that relate to start-up businesses, IP and technology transferral.

**Scholarly Materials** includes books, contributions to books, articles and conference papers, and shall be construed in the light of the common understanding of the phrase in higher education, but excludes any such materials or part of them which can be defined as Teaching Materials, University Materials, or Research Materials and excludes computer programmes;

**Spin-Out Company** means a company established with a view to commercialising IP originating from the University. The University would normally have equity in the spin-out company.

**Staff** means all employees (including full-time and part-time) contracted by the University or any of its subsidiary companies.

**Student(s)** means any student enrolled (or otherwise participating) on a course of study at LSBU

**Teaching Materials** means materials, whether in written or electronic form, created within the University or created on behalf of the University that are (i) produced by you for the purpose of teaching the curriculum of any course run by the University and produced, used or disseminated by the University, and/or (ii) intended to be used or accessed by students for the purposes of their course of study including but not limited to course guides, hand-outs and other teaching aids (including lecture notes, slides and other audio-visual materials), instruction manuals, assessment and examination questions;

**University Materials** means any materials, whether written or electronic form, produced for finance and administrative purposes, including but not limited to promotion and marketing of University courses, student and staff recruitment, papers for any internal committee or similar body, material included in any University handbook for employees or Students or any other University purpose.

**University Resources** means any form of funds, facilities or resources, including equipment and consumables, use/supply of heat, light or power otherwise purchased or paid for by the University, SBUEL or other University subsidiary during that employee's contracted hours of work.