

MIDDLESEX UNIVERSITY POLICY STATEMENT

INTELLECTUAL PROPERTY RIGHTS: STUDENTS

Introduction

Intellectual property is the product of thought, creativity, and intellectual effort. In the course of their studies at Middlesex University, students may generate intellectual property (eg “results”) which are of some commercial value. A variety of legal rights protect applications of ideas and information that may be of commercial value. Those most relevant to the University’s activities include patents, registered designs, copyright and ‘know how’.

The law is clear that intellectual property created by staff ‘in the course of their employment’ belongs to their employer. Students are not normally employees of the University¹ so this aspect of the legislation is inapplicable to them. Current legal opinion is that a ‘blanket’ transfer of intellectual property rights on enrolment is unsustainable. Any assignment must be done by a specific contract. Universities must seek to strike a balance between a duty of care to the student and a duty to exploit for the University’s good, this balance being best achieved by selective assignment arising out of a specific contract in cases where the University’s input is very clear. Such specific assignment also results in the kind of fairness required under the Unfair Contract Terms Act and the Unfair Terms in Consumer Contract Regulations, this legislation also having application to students. Such a position is also preferable from an ethical viewpoint, providing positive publicity for the University. The legal opinion and ethical considerations outlined above inform this Policy and its principles.

1 Principles

The University will:

- (1) seek to strike a balance between fulfilling its duty of care to the student and exploiting intellectual property for the good of the University;
- (2) protect any third party rights;
- (3) seek to make itself the ‘partner of choice’ for students, that is the organisation that students will approach first with any marketable ideas;
- (4) permit students the choice as to whether to be engaged in projects requiring assignment of intellectual property rights;
- (5) be clear to students on the issue of *ownership* in respect of all types of intellectual property through the development of appropriate documentation; and
- (6) promote an understanding of intellectual property among students through workshops and written guidelines where appropriate.

2 Policy on IP Ownership and Exceptions

- 2.1** Students own the intellectual property they generate in the course of their studies except where any one of the following conditions obtain:

¹ In some cases, students may also be employees of Middlesex University. See section 7

2.1.1 *The student is on placement:* Organisations and companies that offer placements will usually require as a condition of acceptance that students assign to them by contract their intellectual property rights in work they create or develop while on placement. The University accepts this practice but will seek to negotiate the 'best terms' it can for students in advance of acceptance by the students. This is especially applicable where designs or software are involved. The best terms might be that placement students are treated as other staff in the company in respect of bonuses or royalties.

2.1.2 *The student is participating in a commercially-sponsored research project:* The structure of some degree programmes may present students with an opportunity to work on a project or application with an external industrial or commercial partner which has contracted with the University to own all the intellectual property resulting from that project or application. In this case, all student-generated intellectual property will need to be assigned to the University in order that it can be assigned to the third party sponsor. Where students are required to assign their rights to a third party, they should be warned in advance that participation in the particular project requires this. Any students not wishing to make an assignment of their intellectual property rights must be free to choose another topic in which they can retain all such rights.²

2.1.3 *The student is studying for a module or programme the main purpose of which is the development of intellectual property:* This occurs in such fields as product design and textile design but is not limited to these. Academic staff contribute the ideas/concepts behind the work and show the students how to carry out the work. Any intellectual property generated is most fairly seen as the result of interaction and team working, contributions to the development being made by both staff and students and, therefore, jointly developed. In cases where the work is commercially viable, the University will seek to obtain intellectual property protection (such as a patent or registered design). In such circumstances, the staff intellectual property contribution will be owned by the University under the staff contract of employment. The student contribution will be assigned to the University and the student will be treated as an academic staff member in respect of the benefits of remuneration.

Information provided to students about modules and programmes of study which require assignment of intellectual property to the University must make this requirement clear to students prior to their enrolment on the module or programme of study. It should be added to the appropriate handbook using the CLQE template.

For research degree students, interview is a suitable opportunity to discuss the intellectual property position and to advise that deferred publication of all (or any part of the thesis) may be required.

2.1.4 *The student is sponsored³ or employed by an organisation other than Middlesex University:* Some students within this category may already be bound by intellectual property agreements entered into with their sponsors or employers. The onus must be on the sponsor or employer to make clear to the University its position on any intellectual property already entered into with the student and to enter into a further written agreement with Middlesex University which confirms who will own the intellectual property rights and who will have the right to use any resulting work.

² This is the same principle of choice enjoyed by students in *The Management of Confidential Information: Code of Practice and Procedures* – students not wishing to sign a confidentiality agreement being given the choice to undertake a project for which no confidentiality agreement is required. The areas of IP assignment and confidentiality are closely related so that the same policy and principles apply.

³ i.e. part or all of their tuition or other costs are paid by an organisation which normally employs them or has a fiduciary relationship to a principal that is not the University

3 Revenue Sharing

In cases where students are required to assign their intellectual property rights to the University, they will be treated as academic members of staff in respect of the benefits of remuneration. This requires that the revenue percentage should be the same as for staff where students carry out equivalent work but the revenue share will vary according to a student's contribution. The University will also seek to ensure that this principle of revenue sharing occurs where there are any financial benefits arising from work undertaken with an industrial or commercial partner. Reference should be made to the University's *Staff Intellectual Property Rights and Revenue Policy* (HRPS 25)

4 Re-Assignment

In the event that the University decides not to exploit intellectual property rights assigned to it by students, it will on request, re-assign them to the students for their own use and benefit. In such cases of re-assignment, the University will, on request by students, investigate fully the commercial potential of the students' work, and may negotiate an exploitation contract with them.

5 The University as 'Partner of Choice'

Where none of the above conditions obtain, students will own the intellectual property rights in their work. Where students have marketable ideas, they will be encouraged to approach the University first as 'the partner of choice'. Documentation for students (see section 8) will explain the risks and expenses involved in the commercialisation of an idea and the fact that the University is in a better negotiating position than an individual student. Should students approach the University for help, the University will negotiate an exploitation contract with them which defines clearly the role and input by the University and the required remuneration. This will be done prior to any exploitation work being undertaken.

6 The University's Rights in respect of Student Copyright Works

- 6.1 Students own the copyright in creative work (essays, projects, dissertations and the like) which they produce in the same way that the copyright in scholarly works and journal articles etc written by staff authors is owned by them.
- 6.2 If the University wishes to use a work in which a student has copyright for **commercial purposes (to generate profit)**, this will be subject to an individual licence to be negotiated with the student, and subject to the University's revenue sharing arrangements.
- 6.3 **In respect of non-commercial purposes (those not aiming to generate a direct profit)**, the University claims the following rights in respect of students' creative works while they are enrolled at the University:
 - To reproduce, without fee, artistic works for educational and promotional use, including but not limited to, databases, websites, academic publications, exhibitions, catalogues, leaflets.
 - to borrow for a reasonable period of time, the material element of any works produced by students and to reproduce these works in appropriate format for a variety of purposes including (but not limited to) showing these works to professional statutory bodies for the validation of appropriate degree programmes.

7 Student-Employees

Where a Middlesex University employee is registered as a student of the University (most usually as a research degree student) it may be unclear whether any intellectual property they create is *qua* employee (that is, 'in the course of employment') or *qua* student. The policy is to give precedence to the employee status in line with practice other higher education institutions.

8 Documentation and Workshops

8.1 Documentation

8.1.1 Student assignment documentation used in the University will be written in simple English in order to comply with the concept of 'fairness' in the Unfair Contract Terms Act and the Unfair Terms in Consumer Contract Regulations. There will be both assignment contracts for students to sign⁴ and an accompanying information sheet that students see at the time of signature explaining why assignment is necessary. The same documentation will also appear in relevant student handbooks.

8.1.2 The CLQE's student handbook template will include a brief resume of the University's position on intellectual property rights. This resume will appear only in those module handbooks where there is an expectation that intellectual property will be generated. The University's website will refer the student to the relevant handbooks.

8.1.3 The Student Website will draw attention to this Policy.

8.1.4 The Regulations for Taught Programmes and the Regulations for Research Degrees will also draw attention to this Policy.

8.2 Workshops

Workshops on intellectual property will be run for Research Degree students and taught Masters Students but should also be open to undergraduates who wish to attend.

9 Arbitration

In the event of a dispute about intellectual property ownership, the student can appeal to the Deputy Vice Chancellor (Research and Enterprise) who will convene a panel to consider the case. The Panel will comprise the Director of Knowledge Transfer (Chair); one Associate Dean (Business) and one Associate Dean (Research) from a School other than the one in which the student is studying, and the Research Manager for Policy, Compliance and Strategy. The student should appeal in writing to the Research Manager for Policy, Compliance and Strategy, and a student nominated by MUSU, within 28 days of the disputed issue being identified.

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⁴ Only one assignment is needed for copyright-based intellectual property as, legally, copyright may be assigned in advance. A two-stage assignment is required for patents as these cannot be assigned in advance but only after the invention has occurred.

