



## Intellectual Property Policy

**Policy Number:**

062-2020

**Academic Year:**

2023/2024 Onwards

**Target Audience:**

All Staff and Students

**Summary of Contents**

This Policy sets out the College's Policy governing the ownership of Intellectual Property Rights ("IPR") in Intellectual Property ("IP") created by, and developed for, or within, the College; and the management, dissemination, and commercial exploitation of the College's IPR.

**Enquiries**

Any enquiries about the contents of this document should be addressed to:

Head of Enterprise and Entrepreneurship

Bangor Campus, Castle Park Road,  
Bangor, BT20 4TD

Telephone: 0345 600 7555

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## 1.0 Change History

- 1.1 Changes to this SOP are documented in Appendix 1 of this document. When reading electronic copies of this document, [you can click here to view the change history](#).

## 2.0 Definitions

- 2.1 Definitions used within this Policy are as follows:

2.2 Intellectual Property (IP) means patents, rights to inventions, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill and to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets), copyright and other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

- 2.3 Intellectual Property Rights (IPR) refer to specific legal rights which protect the owners of IP from others using it without permission. They can be subdivided into four main categories:

- **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. There are some exclusions from patentability such as ideas, theories, discoveries, thoughts, purely financial, commercial, or mathematic methods, games, computer programs, ways of presenting information, and methods of treatment, diagnosis, or surgery.
- **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.
- **Design Rights** generally protect the 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 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. no 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.

- **Trademark Rights** protect names, logos, jingles, slogans, shapes of goods or packaging. The mark must be capable of being graphically represented and of distinguishing your goods or services from others. Trademarks can be registered for an indefinite period of time. Long term use of unregistered trademarks 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.

2.4 **College** means South Eastern Regional College (SERC).

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

2.6 **Inventor/Creator** means any person or persons who create an item of Intellectual Property.

2.7 **Staff** means all employees (including full time and part time) contracted by the College to perform the duties in the course of their employment as defined in their contract of employment.

2.8 **Student** means any full-time or part-time enrolled student, regardless of funding status, and includes students on courses under the remit of Business Services.

2.9 **Affiliate** means any other individual who has a formal link with the College and may include an honorary/visiting academic.

2.10 **Consultant** means an individual outside of the College who is contracted by the College to carry out professional work.

### 3.0 Purpose

3.1 This document sets out South Eastern Regional College's ('the College') Policy governing:

- i. the ownership of Intellectual Property Rights ("IPR") in Intellectual Property ("IP") created by, and developed for, or within, the College; and
- ii. the management, dissemination, and commercial exploitation of the College's IPR.

3.2 This Policy applies to all forms of IP in any format and in any media.

## 4.0 Scope

- 4.1 This Policy applies to all Staff with a College contract of employment, students and other third parties who contribute to the creation of IP jointly with, or on behalf of, the College.

## 5.0 Process

### 5.1 General Principles

- 5.1.1 The College has a duty to protect its investment and rights in its IP.
- 5.1.2 In particular, the College is keen to protect its rights in teaching and support materials so that they can be enhanced, developed, and improved over time, as education is a core College activity.
- 5.1.3 Similarly, the College has a public duty to protect its rights and to commercialise IP that may have economic or social value when College facilities or resources have been used to develop the IP.
- 5.1.4 At the same time, the College recognises the importance of publication and dissemination of knowledge and wishes to balance the above with the need for its staff to pursue and develop their careers. The College notes that publications and materials created by staff containing College owned IP are important for academic teaching. This Policy aims to satisfy all these requirements where reasonably practical.
- 5.1.5 The College is supportive of the sharing of knowledge and creativity for the betterment of society; thus, the College will consider requests on a case-by-case basis for works (which would typically be College owned IP) to be released, where appropriate, under a Creative Commons licence, Open Access, open source software licence, or other similar terms which seek to expand the research and make creative work freely available for others to build upon and share. Staff or Students who wish to make such a request should discuss with the relevant Head of School / Department.
- 5.1.6 Subject to the following paragraphs, the provisions of the Copyright, Design and Patents Act 1988 (as amended) and the Patents Act 1977 (as amended) shall apply to any IP, including inventions produced by Staff. Under the Acts, where the originator of a copyright work, patentable invention, or other similar material, is a member of Staff, their employer shall own the IPR from such creation.

### 5.2 Ownership of Intellectual Property - Staff

- 5.2.1 Unless otherwise agreed in writing and subject to the following provisions and relevant legislation, pursuant to this policy, **it is the College's intention that ownership of all Intellectual Property will reside with it.**
- 5.2.2 Pursuant to the terms of the staff member's contract and as a matter of law, IP created by College staff shall be owned by the College if the IP was created during the course of their duties of employment, regardless of whether such an output is specifically defined within the staff member's role or job description.
- 5.2.3 Course Materials  
The copyright in course materials, including aids to teaching produced by staff in the course of their employment for the purposes of the curriculum of a course run by the College and

produced, used, or disseminated by the College belongs to the College. However, the copyright in any material produced by staff for their personal use and reference shall belong to that member of staff.

#### 5.2.4 Scholarly Works

The copyright in any work or design compiled, edited, or otherwise brought into existence by staff as a scholarly work produced in furtherance of their professional career belongs to staff.

5.2.5 'Scholarly work' includes items such as books, contribution to books, articles, and conference papers, and shall be construed in the light of the common understanding of the phrase in higher education. However, copyright in reports and other material arising from contract research may belong to the College or to a funding body, dependent on the terms of the contract. Subject to these exceptions, the College does not claim the copyright in scholarly works written by staff who will be able to transfer to publishers the copyright of items which they have produced.

5.2.6 Provided the copyright in such scholarly works has not been assigned to a publisher and on approval of the staff member, the College reserves the right to use any scholarly works for non-profit academic purposes such as internal administrative, promotional, teaching and research purposes if deemed appropriate subject always to the College's obligation to respect the moral rights of the staff member in relation to such scholarly works.

#### 5.2.7 Financial & Administrative Materials

All records, documents and other pages (including copies and summaries thereof) which pertain to the finance and administration of the College and which are made by staff in the course of their employment are the property of the College and the copyright in all such original records, documents and papers shall at all times belong to the College.

### **5.3 Ownership of Intellectual Property - Students**

5.3.1 The College acknowledges that Students, as they are not College employees, own the IP they create independently during their studies.

5.3.2 Students who create IP under a College project have the opportunity to assign their IP to the College which will then assist in developing and commercialising the IP.

5.3.3 There are a number of exceptions, which will typically require assignment of IPR from a Student to the College:

- i. Research projects may form a part of many educational programmes and such projects are usually proposed by members of academic staff and will usually be connected in some way to that academic's, or academic group's, on-going research interests. In such cases, students may join a team to investigate one aspect of a much larger research programme, thereby drawing on the considerable expertise, reputation, and infrastructure of the group. In these circumstances, the College will typically require students to assign their IP to the College.
- ii. The IP developed by the student may be needed to enable use to be made of the whole IP portfolio developed by the College. The College seeks to avoid a position where a gap in its IP portfolio precludes successful collaboration or commercialisation.
- iii. IP will often be based on advice and ideas contributed by members of academic staff and may be based on confidential, proprietary, or otherwise valuable information or background IP that already belongs to the College or a sponsor.

- iv. The programme may be conducted under terms of agreements with, or research grants from, outside parties, including both commercial and non-commercial funding bodies. These terms may require that IP generated in the research programme be owned by the outside body or the College or be licensed to the outside body.
- v. In developing the IP, the student has made substantial use of College resources, for example equipment, laboratory time, technician time, or materials.

5.3.4 Where a Student is also an employee of the College, it will be necessary to determine whether a piece of IP is produced as a Student or as an employee as this will determine whether regulations pertaining to Staff or Students apply.

#### **5.4 Ownership of Intellectual Property - Affiliates**

5.4.1 Where it is anticipated that IP may arise during the course or activity undertaken by an affiliate of the College, an IP agreement must be executed by all parties prior to the commencement of any work.

5.4.2 Such agreement must confirm ownership of IP, proposed route of exploitation and basis of compensation for the College and the inventor/creator.

5.4.3 Such agreements must be negotiated by the College and not by the affiliate.

#### **5.5 Ownership of Intellectual Property - Consultants**

5.5.1 Where a consultant is contracted by the College to carry out professional work, any IP created during the course of the work for the College shall belong to the College, except in exceptional circumstances to be agreed by the College.

#### **5.6 Ownership of Intellectual Property – Externally Funded Work**

5.6.1 Where it is anticipated that IP may arise during the course of a collaborative or sponsored project with an external organisation such as industry, other colleges, universities, research organisations or government sponsored programmes, an IP agreement must be executed by all parties prior to the commencement of any work.

5.6.2 Such agreements must confirm ownership of IP, proposed routes of exploitation, and a basis of compensation for the College and inventor/creator. The agreements must be negotiated at a College level and not by individual members of staff or students, though such individuals will have an input to advise negotiations.

#### **5.7 Duties of Staff and Students in respect of Intellectual Property**

5.7.1 It is the responsibility of all staff to disclose to the College all potentially exploitable IP created or arising from duties undertaken as part of their College employment. It is also the responsibility of students who are bound under this Policy to disclose all potentially exploitable IP created or arising from their studies.

5.7.2 Early conception of exploitable IP may arise prior to submission of grant proposals or applications for funding. It is strongly recommended that any staff and/or students applying for such funding which may generate exploitable IP should contact Head of School, School of Performing & Creative Arts for further advice.

5.7.3 Complete confidentiality must be maintained prior to disclosure of any exploitable IP to the College.

5.7.4 Staff and students should identify any obligations to research sponsors or external bodies in respect of IP. It is also the responsibility of staff and students to provide reasonable assistance throughout the commercialisations process, such as providing information in a timely manner upon request, attendance at meetings and engagement with potential partners, collaborators, or licensees.

## 5.8 Commercialisation / Exploitation of Intellectual Property & Revenue Distribution

5.8.1 The College is committed to exploiting IP which it owns or controls in a way that optimises the benefits for itself and the members of staff or students that contributed to its invention, as well as for wider social benefit. Such exploitation may include joint collaborations, exclusive or non-exclusive licensing, assignment, new company formation or a joint venture company

5.8.2 In the interest of equity and fairness, where IP is successfully commercialised, the College will share the net financial benefits with the staff or students concerned on the basis as set out below.

5.8.3 The College may be required to share revenues received after commercialisation with the research partners or funders ("Funders") or such research programmes that contributed to the IP. On these occasions, the Funders revenue share will be deducted from the gross revenue received by the College, net of any commercialisation costs, prior to sharing with College Staff or Students.

5.8.4 Staff or Students are not permitted to access or use College IP on which they may be a named creator or inventor, for example patents, for private consultancy purposes without the prior written consent of the College.

5.8.5 Staff or Students are not permitted to assign or licence to third parties rights in College IP. Staff and Students are obliged to maintain strict confidentiality with respect to College IP and are required to ensure that non-disclosure agreements are in place before discussing matters relating to College IP with third parties.

### 5.8.6 Revenue Distribution

Staff shall be entitled to retain in full any private financial benefit generated from the academic publication of Scholarly Work.

5.8.7 Any member of staff or a student who is responsible for generating IP that subsequently delivers a financial benefit to the College because of commercialisation of that IP, via licence fees or royalty income or otherwise, shall be entitled to a share of the net income. Whilst this will be agreed on a case-by-case basis, the "in-principle", or recommended standard split will be as follows:

- 50% to the staff or students who contributed to the IPR;
- 50% to the College

5.8.8 Where there are multiple Staff or Students associated with creating a piece of IP which has generated the return above, the 50% share shall be split amongst all the contributors on a percentage basis relative to their inventive input.

5.8.9 Where the Staff or Students which have contributed to the IP cannot come to an agreement on the defined contribution percentage in the Invention Disclosure Form (IDF), or where they



have declined to complete that section, the College, through the Chief Finance Officer, shall be the final arbiter.

5.8.10 Net revenue is the net amount after any amounts due to funders, 3<sup>rd</sup> party licensors, and costs incurred in seeking IP protection and exploitation, including but not limited to, securing legal protection, third party IPR costs, IPR enforcement costs, costs related to the commercial exploitation of the IP and financial commitments to investors.

5.8.11 Where IPR is created jointly by a member of staff and a student or third party who may have rights of ownership in the IP, a written agreement between all parties is required before the start of the commercialisation process to address ownership rights and revenue-sharing from any commercial exploitation of the IP. If no agreement is in place, then ownership and revenue sharing between the interested parties shall be determined by the College.

5.8.12 Where a Student or third party contributes to an invention or other IP, the College may require negotiation of a Joint Ownership Management Agreement of IP or the assignment of IPR from this individual to the College, in advance of commencing commercialisation. Under any such assignment, the Student or third party will be treated as Staff for the purposes of revenue distribution.

## **5.9 Conflicts of Interest**

5.9.1 The College wishes to avoid any actual or perceived conflict of interest in handling its IP. Such conflicts of interest may happen in relation to issues relating to agreements and contracts with third party organisations, for example where a staff member has an interest in a third party that enters into a contract with the College.

5.9.2 Therefore, any individual who considers that an action may lead to an actual or perceived conflict of interest must be declared in line with the Conflicts of Interest Policy.

## **5.10 Authorised Signatories**

5.10.1 Authorised signatories for College contracts which include IP provisions are:

- Principal & Chief Executive
- Director of Curriculum and Information Services
- Director of Strategic Planning, Quality & Support

5.10.2 Staff save for those abovementioned, and Students are not authorised signatories for any College IP agreement or arrangement with a third party, whether verbal, written or otherwise.

5.10.3 To ensure that all IP-related agreements and arrangements are legally valid, permission must be expressly granted by one of the above-mentioned authorised signatories.

5.10.4 In all other circumstances, any agreement or arrangement pertaining to the use of or transfer of rights of IP shall be legally non-binding on the College.

## **5.11 Dispute Resolution**

- 5.11.1 If a dispute arises concerning the provisions of this Policy, this should be raised initially with the Head of School, School of Performing & Creative Arts and the parties concerned shall themselves seek to resolve the issues in the first instance.
- 5.11.2 All internal procedures should be exhausted before resorting to external resolution processes. Should no acceptable outcome be reached, the dispute may be referred to an independent expert who shall be appointed by the Principal and Chief Executive in consultation with the staff or students in dispute.
- 5.11.3 The independent expert's decision will be final and binding on the College and the creators/inventors in dispute and shall include the apportionment of the cost and the expenses payable by each of them.

## **6.0 Responsible Owner**

- 6.1 It is the responsibility of the Head of School/Head of Enterprise and Entrepreneurship to ensure that this policy is implemented, adhered to and reviewed.

## **7.0 Communication Plan**

- 7.1 This Policy will be uploaded to the College intranet and referred to in staff induction and training. This Policy is available at [www.serc.ac.uk](http://www.serc.ac.uk) under 'public information' and is accessible in house.

## **8.0 Review**

- 8.1 This Policy will be reviewed annually, or when the need for change has been identified.

## Appendix 1: Document Change History

Version	Date	Change Detail
1.0	14/08/2023	Transferred to new Accessibility Template
1.1	November 23	Reviewed and no changes necessary