

## **Clarification of Intellectual Property Rights**

It is right and proper that the University should clarify the position on Intellectual Property Rights, and that members of Regent House should give serious consideration both to the proposed policy of the Council and to the alternative, amended policy. However, some of the arguments being advanced rest on optimistic interpretations, or misunderstandings, of the policies.

Proponents of the Council's policy argue that it would provide for equal treatment of all staff and students working in collaborative research. However this is not quite accurate. Under Regulation 2, the policy is overridden by any agreements made with third party sponsors. The 3rd Report on IPR gives examples of the conditions imposed by sponsors: some only require University ownership of patents, while others claim copyright too. Thus, even under the Council's proposed policy, different members of research teams will be under different obligations. The amended policy seeks to ameliorate this position by ensuring that the University will return copyrights to their creators after the fact. This will provide less unequal treatment than the Council proposals. It will protect academic freedom while not interfering with the proper exploitation of patents that the University acquires through such sponsorship.

It is also suggested that the amended policy would exclude staff and students from working in collaboration. But the amended policy will put staff and students in substantially the same position as under our 1987 IPR policy, which did not cause such problems. The Council policy, on the other hand, would inhibit collaboration with academics from elsewhere. Visitors to MIT, for example, are required to assign to MIT the patent rights to any ideas they have while there; Regulation 6 of the Council policy would prevent Cambridge staff from signing such an agreement even if they wished to. Such IP tussles are a growing headache for academics; we should not make it worse.

Similarly, a suggestion that the amended policy will lead to litigation also lacks foundation. The amendments retain the entire appeal process and extend its scope to disputes arising from earlier IP policies. It is also inaccurate to suggest that the University needs to own IP in order to arbitrate. The majority of IP disputes in the University relate not to patents but to copyright – typically to whose names should appear on a paper and in what order. By having an appeals process whose scope includes ‘the commercial exploitation of any intellectual property rights, or the subject matter to which such rights relate’, both the Council policy and the amended policy provide a neutral forum in which such disputes can be resolved. If the referee could arbitrate only IP owned by the University, this useful service would be lost. The referee would also be unable to arbitrate where an interest in a patent belongs to a self-funded student, to a collaborator at another institution, or to a funder. This would obviously be undesirable.

It has been suggested that the Council's policy would protect student rights better than the amended version. However, most research students are externally funded, and the large numbers funded by the UK Research Councils have a default position that the University owns all their IP, unless stated otherwise. The Council policy fails to state otherwise in the necessary terms.

As a result, many research students will end up with all their IP owned by the University, unlike the present policy – which at least gives them copyright in ‘normal academic forms of publication’. This is a serious flaw in the Council’s policy, and the amendments deal with it.

Finally, we invite the Council in its response flysheet to clarify an apparent contradiction in its proposal. Regulation 2 says that nothing in the policy takes precedence over an agreement with an external funder, while Regulation 28 says that staff will retain copyright unless the funder explicitly requires to the contrary. Regulation 2 appears to trump Regulation 28; was this the intention? Does Regulation 2 also trump Regulation 4, which apparently gives staff the right to publish? If so (and in any case where a funder insists that the University own ‘all IP’), who will be authorized to sign a copyright release for the publication of an academic paper based on that research? Will it be RSD, the Head of Department, the PI, or the authors?

The Council policy is flawed in many respects. However, the evidence is that the 1987 IPR policy was successful. Cambridge has led the UK in technology transfer. The amended policy will reaffirm the 1987 principles within a clear framework.

We therefore urge you to vote for the amendments.

**Signed**

**Name plus initials (block capitals)**