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Intellectual Property Policy

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Version Control

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3	Nick Murton	29.06.2022	Amendment to Commercial IP text; transferred to new policy template.

1. INTRODUCTION

Edinburgh College is committed to being a high performing digital college, one which is innovative, resilient, agile; has the potential to reach and grow, and offers a curriculum for the future. Effective policies and procedures to facilitate the proper recognition of Intellectual Property Rights are required to underpin and support these aims.

2. SCOPE

This policy sets out the College's position regarding the ownership of Intellectual Property (IP) developed by staff, students and certain others during their time of employment or study. It covers all College related activities, including research and innovation and student education.

This policy applies to all staff of the College, all students enrolled within the College and all contractors such as agency workers, consultants, photographers, designers, with whom the College enters into a contract

3. KEY TERMS

Intellectual Property (IP)

Intellectual Property (IP) represents an intangible creation of the human mind expressed in a tangible form.

In essence, IP may be regarded as ‘knowledge and its creative application.’ In practical terms, IP is when a *unique or original idea* is expressed through physical means such as through a novel, music, dance, inventions and others. IP may have more than one owner and the owner could be either a person or a business.

Examples of *protections* for Intellectual Property (**Intellectual Property Rights**) include: patents, copyright, design rights, trade marks and database rights.

Nature of Intellectual Property	Relevant Intellectual Property Right
New invention	Patent
Literary works	Copyright
Artistic works	Copyright
Designs	Design rights
Brand names	Trade marks

Copyright

Copyright is a form of protection or right granted to owners of IP. It is defined as the legal right, or intangible and exclusive right of the creator of an original work or invention, to prevent or exclude any other person from reproducing, preparing derivative works, distributing, performing, displaying, or using the work covered by the copyright for a specific period of time.

Copyright protects original literary, artistic, dramatic and musical works, sound recordings, films or broadcasts, and the typographical arrangement (layout) of published editions. Books, papers and magazines, learning materials, music, artwork and photographs, films, television and radio programmes, software and computer games are all protected by copyright. Research data, teaching materials, lecture notes may all be works which attract copyright protection.

Patent

A patent gives an inventor the right for a limited period to stop others from making, using or selling an invention without the permission of the inventor. The right of patent makes it illegal for anyone except the owner or someone with the owner's permission to make, use, import or sell the invention in the country where the patent was granted.

Patents protect new inventions and cover how things work, what they do, how they do it, what they are made of and how they are made.

Unregistered designs

UK design right: unregistered design right gives automatic protection for the internal or external shape or configuration of an original design (within the UK only). It allows the rights holder to stop anyone from copying the shape or configuration of a product, but does not give protection for any of the two-dimensional aspects, for example patterns (which can be protected using copyright or registered designs). Design right is free protection for 3D shapes only.

Community design right provides protection against deliberate copying of designs for up to three years, across the whole of the European Union, and also provides protection for the appearance of a product/articles resulting from the lines, colours, texture and/or materials and/or from ornamentation and surface decoration of a product.

Registered designs

Registered designs can be protected in the UK by application to the UK Designs Registry. The design must be new and have 'individual character' in that the design must produce a different overall impression from earlier designs – the novelty requirement is absolute. A registered design gives the owner a monopoly right in the design, meaning third parties cannot produce products which incorporate the registered design regardless of whether they knew about or copied the design. The protection extends to the appearance of the whole or a part of a product resulting from the features of, in particular, the

lines, contours, colours, shape, texture, materials of the product or its ornamentation. Designs can also be registered in foreign countries and across the whole of the EU via a **community design**.

Trade Marks

Trade marks are symbols that distinguish goods and services in the marketplace (like brand names and logos) from those of competitors. It can be, for example, words, logos or a combination of both. They are signs used in trade and a trade mark is usually used as a marketing tool so that customers can recognise particular products or services.

Database right

A database, that is a collection of data or other material that is arranged in such a way so that the items are individually accessible, may be protected by copyright as a literary work and/or database right. This protection can apply to both paper and electronic databases. For copyright protection to apply the database must have originality in the selection or arrangement of the contents and additionally there must have been a substantial investment in obtaining, verifying or presenting its contents. It is possible that a particular database will satisfy both these requirements so that both copyright and database rights apply.

Information on the legal lifespan of each IP protection is available [here](#):

Nature of Intellectual Property
<u>Patent</u>
<u>Copyright</u>
<u>Unregistered Design</u>
<u>Registered Design</u>
<u>Trade marks</u>
<u>Database Rights</u>

4. OWNERSHIP OF INTELLECTUAL PROPERTY

Within the College's role as a provider of Further Education, intellectual property is of great significance because the College is positioned as a user, producer, consumer and disseminator of information. Consequently, it is necessary for the College to minimise its liability and maximise the potential of intellectual creative materials.

The College is aware of the value of its own intellectual property and will take action if necessary to protect the College's intellectual property, including copyrights, trade marks and patents.

Staff

The College will regard itself as owning all IP including Copyright of all materials **uniquely/entirely** developed or produced by staff during

the course of their employment (this is clarified as meaning during a member of staff's contractual hours) for the legal lifespan of the relevant IP protection.

Where an employee has **solely** created materials as part of their **own professional practice outside of employment hours**, and these are also used for teaching, then **the IP belongs to the creator**, and the creator must clearly indicate this on the materials. Examples of this may be published books or music.

Should the College seek to commercially benefit from intellectual property – specifically *inventions* (patents) and *research* directly funded by the Scottish Funding Council (SFC) - it will seek initial guidance from the SFC in the first instance. NB. For the purposes of this policy “commercial” is defined as “making, or intending to make, a profit”.

Contractors

Unless agreed to the contrary, contractors such as agency staff, consultants, photographers, designers with whom the College enters into a contract will be treated as members of staff in terms of any IP that they develop whilst at the College.

Students

Any intellectual property rights arising in connection with any work produced by a student while they are enrolled by the College shall be owned by the student, or jointly if students collaborated.

The student grants to the College a non-exclusive, royalty-free, irrevocable licence in respect of any IP rights created by the student while they are enrolled at College, for the purposes of educational and promotional use, including websites and other online media, academia publications, exhibition catalogues, posters, leaflets and prospectuses, including the right to sub-licence images for educational and promotional use. Any reproduction by the College intended for commercial purposes (defined as “making, or intending to make, a profit”) will be subject to an individual licence to be negotiated with the student (or jointly if students collaborated). Where such a situation arises in *specific* relation to *inventions* (patents) and/or *research* directly funded by the SFC the College will seek initial guidance from the SFC. For clarity: the College shall credit the student where the student’s intellectual property is used for promotional, educational and/or commercial uses.

Research and third-party organisations

Intellectual Property may be generated on research or other third-party contracts - the terms of which may give third parties (usually the third-party body in question) rights over some or all of the IP. In

practice, such third-party rights will be negotiated between the College and the third-party before the contract in question is signed.

Intellectual Property owned by others (third parties)

Use of a third-party's trade mark, patent, copyright or design without their permission is known as [‘IP infringement’ and could lead to a fine, prison or both.](#)

It is usually possible to obtain permission to use a third-party's intellectual property (IP) by getting their permission to use it (via a licence) or by buying the rights from the IP owner. (More specific information on obtaining permission to use of IP owned by others, by individual Intellectual Property Right, is available [here](#)).

Infringement of Intellectual Property Rights by staff or students may expose the College and the individual to legal action and claims for substantial damages. Therefore, no member of staff or student may use Intellectual Property owned by others (including copyright material) other than:

- To the extent permitted by law*
- By the appropriate licences held by the College**; or
- By written permission of the IP owner

Any breach of these regulations may lead to disciplinary action being taken.

Use of third-party Copyright materials at Edinburgh College

The use of third-party *copyrighted* materials within Edinburgh College is an important area which both employees and students should be aware of, and to which a number of specific legal exemptions or College licensing agreements apply. Consequently, use of copyright materials is covered in brief detail below and will be set out more fully in the College's forthcoming Copyright Policy:

Exceptions to copyright*: The Copyright, Designs and Patents Act 1988 (as amended) sets out very specific situations where College staff/students are permitted someone else's copyright works without seeking permission from the owner:

[Non-commercial research and private study](#)

Staff and students are permitted to copy limited extracts of works when the use is non-commercial research or private study, but these must be genuinely used for study/non-commercial research purposes. Such use is only permitted when it is 'fair dealing' (see below) (copying the whole work would not generally be considered fair dealing).

The purpose of this exception is to allow students and researchers to make limited copies of all types of copyright works for non-commercial research or private study. In assessing whether the use of

the work is permitted or not staff/students must assess if there is any financial impact on the copyright owner. Where the impact is not significant, the use may be acceptable.

The source of the quoted material must be mentioned, along with the author.

Teaching

Staff and students are permitted to use copyright works for educational purposes such as:

- copying of works in any medium as long as the use is solely to illustrate a point, it is not done for commercial purposes, it is accompanied by a sufficient acknowledgement, and the use is 'fair dealing' (see below);
- performing, playing or showing copyright works in a school, university or other educational establishment for educational purposes. However, it only applies if the audience is limited to teachers, pupils and others directly connected with the activities of the establishment;
- recording a TV programme or radio broadcast for non-commercial educational purposes in an educational establishment, provided there is no licensing scheme in place (generally a licence will be required from the Educational Recording Agency);
- making copies by using a photocopier, or similar device on behalf of an educational establishment for the purpose of

non-commercial instruction, provided that there is no licensing scheme in place (generally a licence will be required from the Copyright Licensing Agency).

The source of the quoted material must be mentioned, along with the author.

[Helping people with disabilities](#)

The College is permitted (as an educational establishment) to make, communicate, make available, distribute and lend accessible format-copies of protected works on behalf of people with disabilities. Further detail (and legal requirements) are available [here](#):

[Fair dealing](#)

Use of copyright material under the Research and Private Study, and Teaching exceptions, can only apply if the use of the work is 'fair dealing'. Fair dealing is a legal term to establish whether a use of copyright material is lawful or whether it infringes copyright. There is no statutory definition of fair dealing, however factors identified by the courts as relevant in determining whether a particular dealing with a work is fair include:

- Does using the work affect the market for the original work?
If a use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair;

- Is the amount of the work taken reasonable and appropriate?
Was it necessary to use the amount that was taken? Usually only part of a work may be used.

College Licensing Agreements:** The College has existing licensing agreements with a range of agencies. More information on these licenses, including permissible limits on copying and any restrictions that apply, are contained within the forthcoming Copyright Policy.

5. RESPONSIBILITIES

The accountable officer for this policy is the Vice Principal for Corporate Development.

The Director of Communications, Policy and Research is responsible for implementation of this policy.

All staff of the College, all students enrolled within the College and all contractors such as agency workers, consultants, photographers, designers, with whom the College enters into a contract are responsible for complying with this policy.

6. MONITORING

This policy will be reviewed and updated every three years by the college's Information Governance Group, or as required to ensure that

the policy remains aligned with changes to relevant laws, contractual obligations and best practice.