

# Policy for intellectual property rights at the University of Oslo

The policy has been based on two reports from two working groups appointed by the Rector, Arild Underdal, and chaired by Ole Sejersted. The first version of the University's Intellectual Property Rights (IPR) Policy was adopted by the University Board on 16 November 2004, and came into effect on 1 January 2005. On 28 February 2006 and 19 October 2010, the University Board amended the IPR policy. In addition, the current text builds on the working group's report submitted in October 2009, adopted by the University Board on 6 December 2011.<sup>1</sup>

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## 1. Introduction – The need for an Intellectual Property Rights (IPR) policy

The primary functions of the universities in Norway are education, research and dissemination for the public good. The University of Oslo (UiO), with its 2,500 academic employees, is a significant producer of knowledge and research, on both a national and an international scale. As part of its responsibilities to society, the University has a duty to take steps to ensure that society can make use of the research output generated through its activities. Furthermore, the task of dissemination encompasses various aspects of the application or publication of knowledge, intellectual property and research output.

Through both the Act relating to universities and university colleges and the Act relating to the right to employees' inventions (hereafter, the Employee Invention Act), the legislators have made it clear that as part of its responsibilities to the community, the University of Oslo has a duty to help to ensure that the University's research results can be exploited commercially. To this end, the University of Oslo requires a policy for handling intellectual property rights (IPR policy), based on a review of which output from the employees' activities are subject to intellectual property rights and in which cases the University ought to or must acquire these rights.

Acquisition of rights also confers a responsibility to ensure that the findings are used, with the costs that this entails. However, it is important to point out that the socio-economic gain from the commercial exploitation of the results of research will probably be greater and be realised sooner than a potential financial gain for the universities. Contributions of this nature will also serve to enhance the University's reputation and legitimacy in society.

Ideas, inventions and intellectual property created at the University or using the University's resources should be used primarily for the public good. By establishing a system whereby peer-reviewed scientific articles are submitted to the University's institutional repository, the University of Oslo wants to help make research output available to the public through an Open Access system, in accordance with the Norwegian Government's guidelines in Report no. 30 (2008-2009) to the Storting, *Climate for research*.

At the same time, the University and its employees may have a vested interest in ensuring the highest possible return, based on the employees' performance. If students are involved in research activities, it is also important that the IPR policy sets out clear constraints concerning ownership of students' research output and makes arrangements to ensure that this output too is managed properly and developed in a beneficial manner. Nevertheless, the University's IPR policy must be drawn up and enforced in such a way that the individual interests give way to the interests of society when the two are not compatible.

The research community has developed norms and values for how scientific results are obtained and disseminated. The University will protect and safeguard the academic staff's customary and statutory right to decide whether and in what way a scientific publication



is to be published. Therefore, it is part of the University's IPR policy to provide positive incentives to the employees for commercial use of the results of their work when circumstances permit and for traditional dissemination and public use of ideas, findings and intellectual property (including teaching material) that has been produced at the University.

The University of Oslo has established a company, Inven2 AS, to manage exploitation of research results with commercial potential. Inven2 AS is wholly owned by the University of Oslo and Oslo University Hospital HF and administers the rights to inventions developed by the employees at these two institutions. Inven2 AS also assesses all reported research results and, on behalf of the University, acquires the rights to results where there is potential or a possibility for commercial exploitation. This means that, following an assessment of the results, the employees are ensured that the University will follow up the possibilities for commercial exploitation. If the University chooses not to take steps to secure copyright protection and exploit the findings, the employees must be entitled to have these rights reassigned to them. The principles for acquisition of intellectual property rights and any subsequent reassignment of these rights are determined in agreements with the employees.

Activities at the University are characterised by transparency and widespread collaboration with various partners in the private and public sectors. This concerns both external parties who benefit from the University staff's expertise and external partners who contribute toward or pay for services and activities at the University. Much of the research work at the University depends heavily on external funding. In many cases, University staff have two employers (additional positions). This transparency and exchange of expertise is important for both parties, but requires orderliness as regards the issue of intellectual property rights. The distribution of rights must be clarified beforehand in agreements between the institutions or parties.

The University's policy in the area of intellectual property rights has been based on the above principles and aims to balance the above needs.

## 2. What and who is subject to the IPR policy

### 2.1 General

The IPR policy applies to all employees at the University of Oslo (academic staff and technical-administrative staff), people who conduct research in research projects where the University of Oslo is the executive or a participating institution or party (with any exceptions that arise from the provisions of the contract governing the collaboration) and people who have signed an agreement with the University of Oslo regarding execution of assignments. Section 2.2. below gives a more detailed description of the legal bases for the University of Oslo's acquisition of the results of these groups' work.

The University of Oslo's IPR policy covers inventions, intellectual property and other results of work. In this document "results" means tangible and intangible products and



methods that have been discovered, invented, processed, refined or in any other way are connected to intellectual or manual work. An explanation of the various categories of results and their characteristics has been provided in Section 2.3 below.

## **2.2 Overview of legal bases for rights to results**

Pursuant to the Employee Invention Act, the University of Oslo may demand that the right to inventions patentable in Norway be transferred from the employee to the University of Oslo. Nevertheless, lecturers and academic staff retain the right to publish the invention, unless otherwise agreed or a third party's rights prevent this. If, pursuant to this Act, the employer (the University of Oslo) asserts the right to an invention, the employee must facilitate transfer ("assignment") by signing an agreement and/or assignment declaration.

Under the Norwegian Copyright Act, the University of Oslo has rights to catalogues, databases, etc., the development of which the University of Oslo has invested in, and to software created by employees during performance of tasks assigned as part of their employment or according to the employer's instructions.

For results other than those mentioned above, the general rule is that the employee owns the results of their work, for example, articles or books that under the provisions of the Copyright Act the author owns the rights to. The situation is more complex for teaching materials, but the general rule is that the employee owns the rights to teaching material that has a clearly personal style. If the employer wants to acquire the rights to the results, this must be regulated in an agreement or contract. Both the Employee Invention Act and the Copyright Act may, with some exceptions, be supplemented through agreements.

The standard conditions of contract for projects funded by the Research Council of Norway and the EU go even farther than the law; these contracts state that all research results, and the rights connected to them, are the property of the University of Oslo.

In 2006, in connection with implementation of the IPR policy, a standard acquisition of rights agreement was drawn up for patentable and non-patentable inventions, databases, software and physical objects, which all new employees at the University of Oslo must sign on employment. In connection with the drafting of this agreement, the provisions were discussed with the employees' unions. Persons employed before 2006 were encouraged to sign the same agreement. As regards employees who participate in research projects funded by the Research Council of Norway or EU, it is a requirement that the acquisition of rights agreement has been accepted so that the University of Oslo can fulfil its contractual obligations.

## **2.3 Overview of results covered by the University of Oslo's IPR policy**

The following categories of results or output are covered by the University of Oslo's IPR policy and are subject to a notification obligation. These are discussed in more detail in sections 2.3.1 to 2.3.5 below:

- Patentable inventions,



- Non-patentable inventions and other solutions, principles, know-how including e.g. trade secrets, technical, scientific and commercial information and business concepts, hereafter referred to as "non-patentable technology",
- Databases, which group together a large volume of data, or which are the result of a significant investment
- Any tangible product (organic, inorganic and biological matter), including substances, organisms and crops and also materials – hereafter referred to as physical objects,
- Software

These categories of results are all covered by the University of Oslo's IPR policy and may be acquired from the employees by virtue of their employment and in accordance with the employment contracts.

Inven2 AS must be notified of such inventions and copyrightable materials through a "Disclosure of Invention" (DOFI), so that the University of Oslo is able to consider ownership of the invention and as applicable acquisition of the rights to them. This does not mean that in each case the University of Oslo will demand assignment of the rights to all kinds of results. When notifying Inven2 AS of an invention, an employee may point out that he or she will exercise his or her right to publish the invention without awaiting the University of Oslo's assessments, but notification of the invention must be submitted anyway.

The following categories of results are covered by the University of Oslo's IPR policy, but are not subject to an obligation to notify Inven2 AS. These are discussed below in Sections 2.3.6 and 2.3.7:

- Scholarly articles
- Teaching materials

Through the employment contract, the University of Oslo has reserved a limited and non-exclusive right to use results in these categories. In the same way as the 2006 acquisition of rights agreement applied to both academic and technical-administrative staff (see Section 2.2 above), the University of Oslo's IPR policy regarding academic articles and teaching materials also applies to academic and technical-administrative staff alike. However, much of the work-related material that technical-administrative employees produce, as part of the University's role as a public authority, is not covered by copyright protection.

Significant institutional needs suggest that the University of Oslo reserves certain rights to use the employees' copyright-protected results through an agreement with the employee. Consideration of interests between the employee and the institution as regards copyright has been discussed in "Utredning om opphavsrett ved Universitetet i Oslo" (Report on copyright at the University of Oslo) presented in October 2009 by the committee set up by the Rector on 23 December 2005, known as the Sejersted II Committee. The committee's recommendations have provided guidelines for the University of Oslo's IPR policy in this field.



The above-mentioned categories are copyright-protected results. Under the Copyright Act, any person who creates such results shall have the copyright therein. This means that most of the academic employees' production, be it for teaching or research purposes, regardless of whether it is an article, lecture manuscript, PowerPoint presentation or digital learning tool, must be regarded as intellectual property. One conceivable exception is simple PowerPoint presentations, which in an unoriginal way repeat the main points of a particular problem area.

It is the works' form of creative expression<sup>2</sup> that is protected, not the underlying thoughts, ideas, points of view, hypotheses, etc. In this way it will be possible to protect the work's linguistic expression, photographs and animations, etc., and the format and layout, and to some extent also choice of examples, etc. A mathematical formula, a historical source or interpretation of a source, a medical hypothesis or an interpretation of a regulation will have no copyright protection per se.

As only physical persons can create intellectual property, it will almost always, with a few exceptions, be the employee who is entitled to the copyright to results created as part of the University's activities.

### 2.3.1 Patentable inventions

A patent may be granted for inventions that have industrial application, which are new in relation to what was known before the filing date of the patent application, and which also differ essentially therefrom (have inventive step), cf. Section 1 (1) and Section 2 (1) of the Patents Act. If the statutory requirements are met, a patent may be obtained for any kind of invention, such as;

- 1) A product / substance patent (new product or substance),
- 2) Use patent (new use of known product or substance), or
- 3) Method patent (e.g. new method of producing a known substance).

Inventions may only be patented if the patent application has been submitted before the invention is made accessible to others. Therefore, the employee is obliged to refrain from making the invention accessible to others, orally or in writing, until after the University of Oslo, through Inven2 AS, has decided whether to acquire the rights and, if the invention is acquired, until the patent application has been filed. It is important that the invention is not made public until the patent application has been filed, as publication destroys the possibility of patenting.

Pursuant to the Employee Invention Act, the University of Oslo is entitled to acquire "inventions patentable in Norway" that come under the University of Oslo's sphere of activity. The duty to notify the employer about patentable inventions is defined in the Employee Invention Act and is specified in the agreements between the University of Oslo and the employees. Patentable inventions are reported to Inven2 AS in the form of a DOFI.





Pursuant to Section 6 of the Employee Invention Act, employees at the University of Oslo may nevertheless choose to publish their results rather than patenting. In such cases, at the time of notification, the employee must state explicitly that he or she will go ahead with publication regardless. Otherwise, manuscripts must not be offered for publication until a patent application has been filed, unless this has been approved beforehand by the University of Oslo through Inven2 AS. Once a patent application has been submitted, the employee is free to publish the invention, e.g., as a lecture or as part of a scholarly publication, as described in the patent application and in consultation with Inven2 AS.

### 2.3.2 Non-patentable technology

The Employee Invention Act does not apply to inventions only patentable under international law, e.g. the US Patents Act, nor to inventions that are not patentable. In these cases, the right to patent own inventions remains with the employee (cf. the wording "inventions patentable in Norway"), unless otherwise agreed or must be regarded as having been agreed, or unless the inventor wants to transfer the rights to the invention voluntarily.

However, the duty to notify Inven2 AS of inventions does apply in the same way to non-patentable technology as to patentable inventions, as it may be difficult to determine at an early stage whether an invention is patentable or not under Norwegian patent law. Furthermore, it may also be the case that a non-patentable invention may be commercialised through licence agreements, for example. This extended notification obligation is determined in annexes to the employment contracts between the University of Oslo and the employee.

The University of Oslo's right pursuant to the employment contract to acquire non-patentable inventions will be practised in the same way as the right to acquire patentable inventions.

### 2.3.3 Databases

Section 43 of the Copyright Act regulates the rights to databases and catalogues. "The party who produces a formula, catalogue, table, program, database or similar work, has the exclusive right to dispose of all or substantial parts of the contents of the work by producing copies of it and by making it available to the public." In most cases, "the substantial investment" will come from the University of Oslo, meaning that the University of Oslo holds the rights to such databases, catalogues, etc. Examples of databases that are a result of a substantial investment may be databases developed by the Centre for Information Technology (USIT) or the museums, databases with biological data funded by the University of Oslo, long series of measurements, records and data within natural science research, etc.

Databases may be structured in such a way that a third party may have rights to constituent elements of the content of the database. In order for the University of Oslo to



be able to use the database for commercial purposes, it is important that prior to the start-up of a project, the University of Oslo secures the rights to use such elements through agreements with the employee and any external third parties.

An employee who sees commercial potential in a database and who is considering commercial exploitation of a database, or who has taken steps toward such commercialisation, must notify the University of Oslo of this through Inven2 AS. This obligation to notify the University about work associated with databases will be included in the employment contract between the University of Oslo and the employees. Under the Copyright Act, the University of Oslo has an originator's right to the database. In cases where the University of Oslo does not wish to pursue commercial exploitation of a database, the University will consider transferring the right to do so to other parties.

### 2.3.4 Physical objects

Physical objects that are a result of the University of Oslo's investments, including objects that have been created or produced using the University's resources or in another way have been collected or produced through activities at the University, are the property of the University of Oslo, provided this is not or will not come into conflict with other party's rights, e.g., patients' rights associated with blood and tissue samples, etc.

An employee who is considering commercial exploitation of physical objects or has taken steps toward such commercialisation must notify the University of Oslo of this through Inven2 AS. This notification obligation for work associated with physical objects is included in the agreements between the University of Oslo and the employee.

Researchers at the University of Oslo may share research reagents (physical objects which are the property of the University of Oslo) with colleagues at other institutions according to established custom and in accordance with the principle of verifiability of research results, and with the private sector in joint ventures on the conditions stated below. Furthermore, in connection with publication in many scientific journals, the researchers will be obliged to share the reagents because the journals have a contractual practice for this for the same reason.

In accordance with the above, the University of Oslo's researchers may transfer to others physical objects which are the University of Oslo's property with the following limitations:

- i) Part of the object must remain at the University of Oslo, i.e., the source is usually not emptied of all the reagent;
- ii) The recipient must not transfer the reagents to a third party without the University of Oslo's approval;
- iii) Physical objects are only given away for research purposes and not for commercial use;
- iv) The University of Oslo's researchers must obtain a signed Material Transfer Agreement before dispatching the item.





The signed Material Transfer Agreement must be sent to the University of Oslo at the same time as the reagent is dispatched. The University of Oslo has standard agreements for the transfer of physical objects in these cases (Material Transfer Agreement, MTA), which can be used.

## 2.3.5 Computer programs

Section 39 of the Norwegian Copyright Act regulates the rights to computer programs: "Copyright in a computer program which is created by an employee in the execution of duties for which he is employed or in accordance with the instructions of his employer shall, subject to the limitation ensuing from Section 3, devolve on the employer, unless otherwise agreed." (Copyright Act, Section 39 g).

It can be difficult to determine whether a computer program is an invention that is patentable or a work that is copyright protected, or whether the program is both patentable and copyright protected. Patenting or patentability does not preclude copyright protection.

The basic principle is that the employer has all rights in those cases where the computer program has been created by an employee as part of the execution of a task given by the employer, unless otherwise agreed. In respect of academic employees, it is not clear in all contexts just how far this provision of the Copyright Act extends.

The notification obligation for work related to computer programs includes computer programs that are linked to an invention or other technical solution, product or method. It also includes computer programs that, in the employee's opinion, have commercial potential, as well as cases where the employee is considering the commercial exploitation of the program or has already taken steps to commercialise it.

If there is any doubt as to whether a computer program is patentable or not, it must be reported to the University of Oslo, via Inven2 AS. If the computer program is an invention that can be patented, it is essential that the program is not made public, since publication prevents patenting. Publication does not affect copyright protection. However, it must be emphasised that it is up to the researcher to decide whether he or she wants to publish or patent the research results, cf. Section 6 of the Employee Invention Act.

A researcher who has developed a computer program through his or her work and who wishes to publish this as an "open source" is nevertheless free to do so.

If the University of Oslo acquires rights to the invention or know-how that is implemented using the computer program, the copyright to the computer program (the source code) should also be assigned to the University, to the extent that this is necessary for exploitation of the invention or know-how. Assignment of this nature does not prevent the University of Oslo, in consultation with the originator, from choosing to publish the source code once the patent application has been filed.



## 2.3.6 Scholarly articles

It has been pointed out in several contexts that the University ought to increase its institutional archiving. In the White Paper on research *Climate for Research* (Report no. 30 (2008-2009) to the Storting), the Government states that in principle there should be open access to all academic articles that are the result of publicly funded research. In January 2005 the Norwegian Association of Higher Education Institutions (UHR) urged its member institutions to introduce open institutional repositories and to promote publishing in Open Access journals. On 30 January 2009 a working group appointed by the UHR research committee submitted the report, "Increased access to Norwegian research results", recommending, among other things, mandatory deposit of scholarly articles in institutional repositories. Funding institutions are also increasingly requiring mandatory self-archiving of research results from projects.<sup>3</sup> The University of Oslo's *Strategy 2020* states that priority shall be given to the efforts to preserve and make accessible scholarly publications in open institutional repositories and to Open Access publishing.

It is a prerequisite for introducing obligatory deposits in the institution's repository that the employee, in accordance with the principles of academic freedom, is free to publish the article in those journals that have the best peer review schemes, which are recognised in international academic communities and which are easy to search. The employee must therefore retain the exclusive right to choose the time of publication and publication channel.

The term "institutional archiving" is generally understood as the deposit of peer-reviewed articles in open institutional or subject-specific digital repository, where the articles are made available in full text. However, the term is not unambiguous, although it normally refers to both the archiving and the accessibility of articles.

To avoid confusion, in the following we will distinguish between 1) the deposit and archiving of articles in the institution's repository, hereinafter referred to as *institutional archiving*, and 2) the *subsequent accessibility* of articles via the institution's repositories. "Subsequent accessibility" encompasses both making articles available to a limited, closed group at the University, such as staff and students through an access-restricted network, and making them publicly available on the Internet.

Pursuant to the employment contract, everyone who is appointed after 1 January 2012 undertakes to deposit, without undue delay, an electronic copy of all scholarly articles produced in connection with the employment for archiving and storage in the institution's electronic research repository (institutional archiving). The employee shall deposit the final manuscript after peer review ("post print version"). If the publisher permits institutional archiving of the publisher's PDF, then this is the preferred choice. If publication takes place in a journal that does not allow institutional archiving, and the employee, *after inquiring*, is not granted such permission by the publisher, the person concerned is relieved of this institutional archiving requirement. The same applies if one



or more co-authors of the work who are not employed at the University of Oslo do not consent to institutional archiving.

To follow up on the political guidelines laid down in Report no. 30 (2008-2009) to the Storting, *Climate for research*, all members of staff employed by the University of Oslo after 1 January 2012 have a duty to make a *best effort attempt* to ensure that submitted scholarly articles can be made accessible as soon as possible via the electronic research repository on the University of Oslo's website. The University also encourages all other employees to do the same.

*Best effort attempt*, as mentioned above, entails a certain duty of action by the employee. It implies that on submission of the scholarly article to a journal, the employee must ask the publisher for permission to store the article in the University's institutional repository and subsequent accessibility via the University of Oslo's research repository.<sup>4</sup> Some publishers are willing to enter into institutional agreements on Open Access and subsequent accessibility. This kind of agreement entails that the employees will not have to seek copyright clearance of rights from the publisher individually.

The goal is that deposited scholarly articles should be freely accessible to everyone on the Internet via the University of Oslo's research repository after a defined period of time, unless this is incompatible with the publishing agreement. The articles may also be subject to varying levels of access restriction in accordance with any special provisions in the publishing agreement with the publisher. Unless otherwise specified, the use of the work online is regulated by the general provisions of the Copyright Act.

The provisions on institutional archiving also apply to doctoral theses. If the thesis has been published in the form of one or several articles, the same rules for subsequent accessibility as mentioned above apply.

The employment contracts of people appointed before 1 January 2012 do not contain any provisions on institutional archiving in the University of Oslo's electronic repository and subsequent accessibility. The University nevertheless encourages all members of staff to follow the new regulations on institutional archiving and "post print" accessibility in line with the guidelines in the White Paper on research: Report no. 30 (2008-2009) to the Storting, *Climate for research*.

## 2.3.7 Teaching materials

### 2.3.7.1 Introduction

As University employees, the academic staff prepare materials for use in teaching. It must be assumed that most of this material is intellectual property, but there will also be material that is not covered by the Copyright Act. The University of Oslo acquires certain rights to use teaching materials through the employment relationship. The concrete consequences of this for the individual academic employee, however, are far from clear. It is therefore necessary to clarify the rules in this area.



In the following, a distinction is made between *personal* teaching material and *standardised* teaching material. "Personal teaching material" means teaching material that the employee has prepared for personal use in courses or lectures and that has a clearly personal element. "Standardised teaching material" means teaching material that has been prepared for use by any lecturer and is not closely linked to a particular lecturer's personal presentation style.

Students expect teaching materials to be accessible on the University's website. In connection with making materials available electronically, it is important to distinguish between general accessibility at the internet and access-restricted learning networks, as they are subject to different legal regulation. "Access-restricted learning network" means a closed electronic network for use by students who have been granted access to the teaching resources. Posting copyrighted material on the internet always requires the consent of the author. For this reason, great care must be taken not to post material on the internet that may contain material created by third parties, unless clearance has been obtained. By contrast, published material can generally be made available on access-restricted learning networks without the consent of, or payment to, the originator. This is pursuant to Section 21, first paragraph, of the Copyright Act, which allows performance of a published work in an educational context. This means that employees can include text and images (but not film) created by third parties in their teaching materials and present it freely in the learning portal. This provision requires that the institution has the authority to produce an electronic copy of the material that is required to publish the material in a network (e.g. a Kopinor Agreement).

As mentioned in Section 2.3, when establishing institutional rights to use copyrighted material, the interests of the institution's needs must be weighed up against the employee's rights. Making teaching material available in an access-restricted learning network gives the individual employee greater control over the distribution of the material and will thus constitute a much lesser intrusion on their rights than general accessibility on the internet.

### **2.3.7.2 Personal teaching material**

As a general rule, the rights to personal teaching material lie with the employee who created it. The University of Oslo will not reserve the rights to such material, and no such rights can be inferred for the University of Oslo from the employment contract, unless this is stated expressly.

Oral presentations will typically have a personal, individual style. The University does not therefore demand any rights to the employee's oral teaching. If lectures are to be filmed and posted on the University's website, this must always be done with the employee's prior consent and on the basis of a written agreement between the University of Oslo and the employee. The same applies to audio recordings. The employee must have the opportunity to demand that the material be removed from the network. The University has developed a standard contract regulating the rights and obligations between the employee and the University of Oslo with respect to recordings of lectures



that are made accessible online. In this way, the University wants to facilitate broader online dissemination of knowledge for the academic staff who want it.

In view of the growing expectation that teaching material is available on the learning network, the academic staff must also be willing to comply to a certain degree. This means that self-made support material with a clearly personal style, such as lecture outlines, simple PowerPoint presentations, student assignments etc. that employees prepare for their own classes, under their employment contract, shall be made accessible in electronic format in an access-restricted learning network for the students in connection with the execution of courses / series of lectures. However, the material may not be used by other lecturers without the consent of the employee who created it. The employee may demand to have the material removed after the course / lecture is finished.

An exception is lecture outlines indicating the main points in a series of lectures that are open to the public: the University will always be able to make these available online on the UiO website. If the material contains third-party rights, clearance must be obtained in advance or these elements must be removed from the material. The employee who created the work must always be credited in accordance with Section 3 of the Copyright Act.

In the event that an employee wants to make more of their own personal teaching and research material accessible on the University's website, the University has developed a standard contract regulating rights and obligations between the employee and the University of Oslo in connection with making this kind of material accessible. Unless otherwise decided by the employee, the use by students and/or the public of the material that has been made accessible online is regulated by the general provisions of the Copyright Act. The employee is entitled to guidance both with respect to managing their own rights and handling third-party rights.

### **2.3.7.3 Standardised teaching material**

In light of the academic employees' duty to teach, a general non-exclusive right can be inferred for the institution to use standardised teaching material developed by University employees in connection with their teaching activities. Standardised teaching material can be anything from simple lesson plans to complex digital learning packages that require significant additional resources to prepare. A number of specific types of cases will be described below.

At many institutions, a great deal standardised teaching material is prepared. This encompasses outlines for courses and/or lectures, course assignments, etc. that have been prepared by several teachers together for use by various lecturers who teach the same subject. The purpose of the preparation of common standardised teaching materials is to ensure that the students receive similar teaching regardless of which lecturer holds the course. This will typically be the case for some types of courses related to professional studies, for example, some of the courses taught at the Faculty of Law.



By virtue of the employment relationship, it follows that the University is entitled to make simple standardised teaching material, as described above, available to the students in an access-restricted learning network in connection with the teaching. This applies even if one of the people who prepared the material ceases to be employed by the institution. The University also has the right to modify standardised teaching material to the extent necessary to keep it up to date academically or to ensure that third-party rights are not infringed. The employee shall be notified before such changes are made and can demand to have their name removed from the modified material if they want. In order to ensure clarity concerning the University's rights to use the aforementioned type of material, this will be specified in the employment contract when new members of staff are appointed.

In connection with lecture outlines indicating the main points in a series of lectures that are open to the public, the University will nevertheless be able to make these accessible online on the UiO website. If the material contains third-party rights, clearance must be obtained in advance or these elements must be removed from the material. The authors must be named in accordance with Section 3 of the Copyright Act.

It often requires substantial additional resources to establish complex standardised teaching programmes, and they tend to be developed by several people in collaboration. Often the University will have allocated earmarked funds for the preparation of the programme, or the involved employees will have received some form of special compensation for their work, such as time off from teaching. The programme will generally be designed for use over several semesters. Often such teaching programmes incorporate works or other protected material that other people have created previously, for example, excerpts from texts or pieces of music that are to be analysed, images of pathologies taken at an affiliated hospital, or software developed by an IT company. This requires the consent of the copyright owners.

In these kinds of cases, the University and the individual employees involved must therefore always enter into an agreement before any development project defining the rights and obligations of the parties with respect to the standardised teaching material.

As a general rule, the University must have a free, non-exclusive right to use the material developed in its own teaching activities. This means that the University will be able to give the students who are enrolled on the course of study access to the teaching programme via an access-restricted learning network. This right shall also continue after termination of the employment relationship. The University shall have the right to modify the programme to keep it up to date academically or to ensure that third-party rights are not infringed. The employee shall be notified before such changes are made and can demand to have their name removed from the programme if they do not agree with the changes. Employees will always have the right to oppose any alterations that are prejudicial in accordance with Section 3 of the Copyright Act. Employees can demand to take a copy of the programme with them when their employment at the University ceases.





However, this right only applies to the individual employee's own contribution to the teaching programme and not to elements created by others.

## **2.4 The University of Oslo acquires rights and subsequently reassigns the rights to the inventor**

In cases where the University, after having acquired an invention or other output from a project or work pursuant to an Act of law or agreement,

- 1) decides not to pursue a patent, or,
  - 2) does not wish to or does not find it commercially viable to continue a project,
- the University of Oslo shall offer to reassign the rights back to the inventor.

In these kinds of situations, a standard agreement is signed that regulates the relationship between the parties. If the invention is subsequently commercialised, the University of Oslo will normally be entitled to 15% of the revenue that the inventor receives as his share.

The inventor undertakes to comply with all the obligations that the University has towards external third parties that have funded the research that led to the invention.

The University of Oslo retains a right to use the invention or work for teaching and research purposes at the University, and the right to sublicense this right of usage to other non-commercial partners or institutions. Specific problems arise in connection with publications where a publishing agreement has been signed that entails that the employee's rights are fully or partly transferred to the publisher or other equivalent holder of rights.

In the above case, the University can also, if the employee does not wish to acquire the rights, decide to relinquish the rights, with the effect that the University is no longer obliged to work to ensure the commercial exploitation of the results.

## **3. Specific issues related to contracts with external institutions**

### **3.1 The need to regulate rights issues in agreements in connection with research collaboration**

All research collaboration that the University of Oslo has with external institutions shall be based on written agreements that regulate rights issues, among other things. Agreements, budgets and prices for such collaboration are regulated in more detail in Circular F20-07 from the Ministry of Education and Research and the University of Oslo's regulations on grant or commission based funding of activities (the BOA regulations).



In light of the provisions of the Act relating to universities and university colleges, the University of Oslo cannot enter into agreements that allow for permanent secrecy concerning results of research performed by University employees. However, if it is necessary to postpone public disclosure in order to protect rights in the form of a patent application or similar, publication can be postponed for a short period. The University of Oslo also has an unconditional duty to ensure that research results are accessible for further research at the institution, and that the results can be used for educational purposes.

In addition to the above, the ownership and exploitation of rights will be subject to negotiations between the University of Oslo and the relevant partners. A general principle for these negotiations is that the exploitation of rights shall reflect how the research was funded. In negotiations with external sponsors and sources of funding, the University of Oslo shall do its utmost to protect and promote the interests of society and secure for the University of Oslo and the individual creator of the results the greatest possible freedom within the framework of the University's IPR policy. In all cases, the principles laid down in the Copyright Act must be observed, and the general research ethical principles of transparency in research and making the results of research available to the public must be respected.

Insofar as the University of Oslo's direct or indirect contributions have been funded by the basic grant from the Storting, the University of Oslo has a duty to secure ownership of the research results so that they can be exploited for the public good in the broadest sense. The University of Oslo has established the company, Inven2 AS, to manage exploitation of these rights. The same applies in cases where the research has been funded by other public sources of funding.

In cases where researchers at the University conduct research that is fully funded by a private client (including labour costs, project costs, costs associated with infrastructure, and profits), it will be possible to enter into agreements where the right to the results is transferred to the client. Assignment of rights of this nature shall be limited to the specific results that are expected to be achieved in the project. However, the prohibition against permanent secrecy and the duty to secure the right to further research and use of the results in teaching contexts also apply to fully funded research.

### **3.2 Special rules for research funded by the EU or the Research Council of Norway**

The standard conditions of contract for projects funded by the Research Council of Norway and the EU go even farther than the law; these contracts state that all research results, and the rights connected to them, are the property of the University of Oslo.

The EU and the Research Council of Norway's standard conditions of contract are formulated in such a way that they ensure ownership of the results of research, regardless of whether they are patentable inventions, non-patentable technology, other research results or intellectual property. However, this does not imply that the creator of



intellectual property is bound by the agreement with the external third party, but it does impose on the University of Oslo as an institution a duty to ensure that the University in relation to its own employees can comply with the provisions in agreements entered into with the EU and the Research Council of Norway.

Against this background, the University of Oslo has included formulations in its agreements with its employees that ensure that the University can fulfil its commitments to the EU and the Research Council of Norway.

## **4. Ownership of results created by employees with two or more employers**

### **4.1 The need for special regulation of dual appointments**

As stated in Chapter 2, the Employee Invention Act and the employment contracts with employees at the University of Oslo provide that the rights to works that were created as part of the employment relationship shall be transferred to the employer. However, in cases where an employee of the University of Oslo also has other employers, the question may arise as to which employer owns the results. In connection with commercialisation of results produced by an employee with two or more employers, a distinction must be drawn between external relationships with third parties, the relationship between the employers (institutions), and the relationship between the rights holders (inventors and institution).

The University of Oslo has entered into a number of framework agreements with other institutions and parties that also employ UiO employees, such as the comprehensive framework agreement with Oslo University Hospital HF, in which IPR issues are regulated. The framework agreements can assign the rights to the results to one party and specifically regulate the distribution of financial responsibilities and the rights to financial gains.

If there is no framework agreement between the employers of an individual researcher with dual employment, issues related to dual employment must be regulated in the individual's employment contract with the University of Oslo.



## **4.2 Relationship to the guidelines for secondary employment at the University of Oslo**

In all cases where an employee of the University of Oslo is also employed by another employer, this secondary employment must be registered in accordance with the guidelines for secondary employment at the University of Oslo. Similarly, private consultancy agreements and assignments must also be registered.

The University of Oslo and the individual employee can then together identify any potential problems pertaining to the University's IPR policy and jointly arrive at appropriate contractual provisions that regulate the IPR issues in the individual case.

## **4.3 Principles for allocation of rights**

The right to commercially exploit research results should accrue to the main employer in cases where the secondary post does not include a significant research component. If the secondary post does have a significant research component, this right should accrue to the institution responsible for the largest "inventor's share", or the institution that the parties have agreed in advance in each individual case of dual employment.

If the distribution of rights has not been agreed before the results were created and the results are considered to be jointly owned by both employers, the parties shall enter into an agreement regulating commercialisation and any transfer of the rights to one of the parties against compensation.

## **4.4 Certain types of cases in more detail**

### **4.4.1 Employees who are also employed by another public employer**

Examples include positions linked to another university or university college, government agency or health trust. There are many different combinations, but the basic principle should be that financial responsibility and the rights to gains accrue to the employer where the employment involves research. If both positions involve research, the parties must agree on the distribution of rights. As a starting point, a fraction corresponding to the relative size of position is reasonable, but the parties' other contributions must also be taken into account.

For employees in combined positions at hospitals (for example main employment as a clinical consultant with secondary employment as a professor II, or main employment as a professor I and secondary employment as a clinical consultant), the general rule is that the University of Oslo has a 50% share in terms of both financial responsibility and the right to financial gains. Collaboration with other health trusts should follow the same principles as in the University's agreement with Oslo University Hospital HF.



## 4.4.2 Employees who are also employed at another research institute

It is important that the University of Oslo's IPR policy promotes productive forms of collaboration with both the institutional sector and industry. This must therefore be taken into account when entering into collaboration agreements that involve shared employer's responsibility and cases of dual employment without a framework agreement. Normally, the same principles that apply to public employers will apply when entering into such agreements.

## 4.4.3 Employees who are also employed by or perform assignments for private parties

Inventions that are created in an employment relationship with or an assignment for a private employer by an employee of the University of Oslo must always be reported to Inven2 AS as a Disclosure of Invention, so that the University has the opportunity to consider ownership of the invention.

For the University to refrain from lodging a claim for rights, it is essential that the employee has notified the University about the employment relationship or assignment contract in accordance with the specified procedures, and that the research results have been reported to Inven2 AS. In addition, it must be possible to document that all the work, costs and development have taken place at the company and not at the University of Oslo.

If the research results were produced in part during employment for a private employer and in part during the employee's working hours at the University of Oslo, on University property or using University resources, the University of Oslo will have partial rights to the results of the research.

## 5. Students' rights

There is a growing tendency, and it is also a strategic goal, that University students are being more actively involved in major research projects. The legal basis is that any research results that are created by students at the University of Oslo are the property of the individual student, and the individual student is free to dispose of the results of their work as he or she chooses. However, students who are also employed, for example, in a project position or as a research assistant, are subject to the same provisions as other employees, insofar as the result of their work is related to the tasks that are integral to their position.

For projects that are wholly or partly funded by the Research Council of Norway or an EU institution, it is a requirement that the participating institution is able to exploit the results of research. In these kinds of projects, it is therefore necessary to enter into a separate acquisition of rights agreement with the individual student in connection with the individual project.



In other cases too, the University will be entitled to acquire students' rights to commercially exploit the results through voluntary transfer provided that (i) the University of Oslo student so requests and (ii) Inven2 AS, after a commercial assessment of the results, deems acquisition expedient and desirable.

In cases where the University of Oslo acquires the right to commercially exploit the results of research through an agreement in accordance with the above, the student shall have the same right to receive a share of any net earnings in accordance with Chapter 6 as the people employed by the University of Oslo.

## **6. Distribution of net earnings**

### **6.1 Distribution of net earnings using the tripartite principle**

These guidelines shall apply to inventions that the University of Oslo or a unit authorised by the University of Oslo acquires in accordance with Employee Invention Act, and the other projects with commercial potential where the University of Oslo through Inven2 AS acquires the right to commercially exploit the results of research.

All employees at the University of Oslo are given the same remuneration and incentives for inventions, in other words, both academic employees and technical-administrative staff are awarded an equal share of net earnings. The remuneration rules do not apply to people who deliver services (contractors and subcontractors) to the University of Oslo.

i) After deduction of Inven2 AS's documented costs for commercialisation, the net earnings are split three ways, with a third going to the inventor (employee), a third going to the University of Oslo and a third going to Inven2 AS.

Normally a defined portion of the University's share will be distributed to the academic unit where the inventor / employee works in the form of research allocations at the lowest administrative level above the inventor (known as the "basic unit"). Of the first NOK 10 million in net accumulated earnings, 25% will be set aside for such a research allocation. For earnings in excess of NOK 10 million, 10% is set aside for a research allocation, up to a total of NOK 50 million. The faculty or basic unit concerned will be given an 8% share of the net earnings to cover its own innovation work.

The inventor's / employee's share of the earnings and the research allocations are paid in cash after an annual settlement of accounts. If commercialization is done through the establishment of a limited liability company, as a licensee, payment may be postponed until the shares in the company have been sold (exit).

Inven2 AS manages its third of the net earnings by investing in and operating its own innovation projects and/or other investment of profits (fund management). Provisions





may also be made to build up a fund for innovation at the University of Oslo by agreement with the owner.

ii) If income accrues on projects where the University of Oslo has rights, but has not demanded to have the rights to the invention transferred to the University and/or reassigns the right to exploit the research results back to the inventor and inventor exploits the invention commercially, 15% of the net earnings shall accrue to the University of Oslo.

iii) If the inventor / employees neglects his or her duty to notify the University of Oslo, via Inven2 AS, of the results of work and instead exploits the results either him-/herself or through others, the University of Oslo will be entitled to 2/3 of the net earnings created directly or indirectly through the commercial exploitation of result of the work.

## 6.2 Principles for distribution of earnings linked to shares

An invention or other results of research that can be exploited commercially may give rise to incorporation of a company. In connection with the establishment of a business enterprise based on the technology in a commercialisation project, the price of the technology is negotiated in shares in the company and balanced against other investments in the company, input from Inven2 AS (here, shares will replace overheads), input from the commercialisation companies, input from the inventor after the invention, etc. Inven2 AS negotiates with the inventors on behalf of the University of Oslo.

The distribution of the shares is determined by pricing the various elements in the negotiations. The shares that are payment for the transfer of the actual invention or technology should be distributed according to the same principle as cash in a separate agreement for each project. The researcher (the employee) will have the shares transferred to him or her directly, while Inven2 AS manages the University's shares until exit, after which the unit at the University will be given their portion of the earnings.

The shares are managed according to the general guidelines set out in the agreement between the University of Oslo and Inven2 AS and the specific guidelines determined by the Board of Inven2 AS. In cases where the University of Oslo acquires shares, the following principles regarding ownership of shares in companies established on the basis of technology licensed from the University of Oslo shall always apply:

- The University of Oslo will be a passive owner.
- In cases where individual inventors employed by the University of Oslo own, or will own, shares in the company, the provisions of the Public Administration Act and the potential conflicts of interests shall be observed.
- The shareholding will be managed by Inven2 AS or a person appointed by the Board of Inven2 AS.



## 7. Inven2 AS

### 7.1 Inven2's role and tasks

Inven2 AS shall, on behalf of the University of Oslo manage and develop the University of Oslo's rights to the results of work and research that can be exploited commercially, thereby contributing to innovation and the transfer of knowledge from the University of Oslo out to society. In the long term, the company's activities shall generate revenue that will be invested in new research and innovation. In some cases, the company may own rights transferred from the University of Oslo or other parties (cf. Article 3 of the Articles of Association for Inven2 AS of 21 April 2010).

As the University of Oslo's management company for intellectual property rights, including copyright protection and commercialisation of results, Inven2 AS is responsible for the following tasks:

- a. Assist the University of Oslo in its efforts to strengthen the culture for innovation and contact with industry at the University of Oslo and help promote the University in the field of innovation and commercialisation of research findings.
- b. Process reported ideas (Disclosure of Invention; DOFI) by means of identification, registration, assessment of commercial potential and choice of IPR strategy, and obtain copyright protection in cases where this has been deemed appropriate. This work also includes a duty to provide written feedback to inventors concerning whether Inven2 AS is going to set up a project based on the submitted DOFI. This feedback should normally be given within two months of receipt of the DOFI.
- c. Perform innovation and commercialisation tasks, including copyright protection and business development in accordance with the University of Oslo's IPR policy.
- d. Commercialise the results of work and research that the University of Oslo has rights to and that has commercial potential, including negotiating, entering into and following up agreements with third parties in innovation and commercialisation projects. Once written feedback as specified in item b above has been given, Inven2 AS shall prepare a project plan that will normally include a summary of milestones related to technical development, copyright protection and commercialisation.
- e. Be responsible for the project with regard to applying for funding from appropriate sources of funding for development of innovation and commercialisation projects.

On behalf of the University of Oslo, Inven2 AS makes decisions concerning patenting, licensing and setting up companies, and negotiates and signs agreements with third parties on matters relating to the University of Oslo's rights to results obtained at the University. Inven2 AS manages the University of Oslo's ownership and rights once agreements have been entered into and is the University of Oslo's point of contact with external parties in matters linked to the management of the University's rights, for example in connection with due diligence, unless the contract indicates otherwise.



For more detailed information on the tasks ascribed to Inven2, see the Articles of Association for Inven2 AS of 21 April 2010 and the Management Agreement between the University of Oslo and Inven2 AS of 8 June 2010.

## **7.2 Use of the University's facilities and equipment for the exploitation of research results**

For innovation projects run by Inven2 AS that have been set up on the basis of research or projects at the University of Oslo, the University is willing enter into agreements concerning rental of premises and equipment. These kinds of agreements must not inconvenience the University of Oslo's ordinary activities.

Any agreement entered into must be based on commercial terms and secure the University of Oslo full payment at current market rates. This includes full coverage of all operating expenses related to the activity, such as salaries, equipment, heating, electricity, etc.

## **8. Disputes regarding rights or distribution of earnings**

In the event of doubt or disagreement between an employee and the University of Oslo concerning ownership of rights or distribution of net earnings from the commercialisation of research results, the matter shall be reported to the Department of Research Administration. The Department will provide all the stakeholders with the opportunity to present their views on the facts of the case, and on the basis of this strive to find an amicable solution. If agreement is not reached, one party can request that the matter be brought before the IPR Committee for consideration.

If they are not resolved by the parties, matters covered by the Employee Invention Act can be brought before Conciliation Board for Employees' inventions ("Meklingsnemda") pursuant to Section 12 of the Act.

In all cases, disputes about rights and distribution of earnings may also be brought before a court of law.

## **9. The IPR Committee**

A permanent IPR Committee will be established to ensure that special matters related to commercial and non-commercial use and exploitation of research results are handled properly at the University of Oslo. The Committee shall have a composition that ensures independence and impartiality in relation to the University of Oslo and the employees.

The IPR Committee shall have the following mandate:

"The IPR Committee shall assess cases and give advisory opinions in disputes between inventors and the University of Oslo on the basis of the University of Oslo's adopted IPR



policy. The Committee may also suggest or recommend changes in the policy to the Rector and the University Board when experience over time suggests that this is desirable or expedient."

The establishment of the IPR Committee shall not preclude other units at the University of Oslo from also proposing amendments to the University Director or the Rector.

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<sup>1</sup>Note that the English translation is for information purposes and that it for all legal purposes is the original document in Norwegian that is the authoritative version.

<sup>2</sup>The IPR policy at the University of Bergen, which was adopted on 18 June 2009 deals with the question of crediting in Section 2.2. The University of Bergen's description of the statutory rules and international principles in this area is appropriate for the University of Oslo's researchers and is therefore quoted below:

A special question that arises when publishing academic work is who should be credited. Pursuant to Section 3 (1) of the Copyright Act "the author is entitled to have his name stated in the manner required by proper usage". An important point here is that only the person or persons who have contributed "an original, creative effort to the development of the work" can be regarded as the originator of this. People who have only contributed ideas, research results, financial or practical aid, etc. cannot be regarded as the originator of the work.

However, the right to be named in a publication may follow from other regulations. An example of such a set of rules is the so-called "Vancouver Protocol", which sets three conditions for being credited as the author of a published article in the byline. The author must 1) have made a substantial contribution to conception and design or analysis and interpretation of collected data to be used in the article and in formulation of this; 2) write a draft article or revise it critically for important intellectual content and 3) approve the final version to be published. Persons, who have contributed to the article in other ways, but who do not satisfy all three conditions, must be credited outside the byline in a different part of the article. The Vancouver Protocol applies in substance only to publication in bio-medical journals, but these principles are in the process of becoming a code of conduct for research that is used in all fields.

As regards crediting institutions, reference is made to the "guidelines for crediting scientific publications from institutions" recommended by the Norwegian Association of Higher Education Institutions (UHR) on 29 April 2011, the Association of Norwegian Research Institutes (FFA) on 9 June 2011 and the National Cooperation Group for Medical and Health Research (NSG) on 4 May 2001, visit

[http://www.uhr.no/aktuelt\\_fra\\_uhr/veiledende\\_retningslinjer\\_for\\_kreditering\\_av\\_vitenskapelige](http://www.uhr.no/aktuelt_fra_uhr/veiledende_retningslinjer_for_kreditering_av_vitenskapelige). In addition, reference is made to the "Guidelines for addressing and crediting scientific publications" adopted by the Cooperative Body for Southern Eastern Norway Regional Health Authority and the University of Oslo on 30 September 2011, refer to case no. 33-2011 <http://www.uio.no/om/samarbeid/samfunn-og-naringsliv/shhu/Innkallinger/2011/300911/sak33-2011-retningslinjer-kreditering-adressering-vitenskapelige-publikasjoner.pdf>.

<sup>3</sup> In August 2008, the European Commission launched a pilot initiative within the 7th Framework Programme (FP7) to ensure Open Access, i.e. free access to research results from EU-funded research in open online repositories. To this end, the European Commission has developed standard templates for use by researchers to ensure the necessary copyright clearance from the publishers. Researchers at the University of Oslo involved in EU projects which fall under this pilot initiative are subject to the Commission's regulations on Open Access through the grant contract.

<sup>4</sup> A standard letter to publishers is prepared in Norwegian and English and a standard addendum in Norwegian and English to the publishing agreement concerning institutional archiving and subsequent accessibility, to minimise the extra work linked to submitting academic articles to publishers. This procedure corresponds to the procedures that have been established in connection with the EU Open Access Pilot. In this way, the University of Oslo is striving to create a uniform Open Access system for employees.

