

Information

Further Education and Copyright

Copyright arises automatically on the creation of a work and attaches to the author of that work, whether the work is artistic, literary or academic. As registration of copyright is not necessary to claim ownership, it often means that ownership of copyright can be something of a grey area, particularly where more than one party is involved in the generation of the protected work.

This is a situation which often presents arises in the context of further education and it is therefore particularly important for further education institutions to be aware of the extent of their intellectual property rights and to ensure that these can be protected and marketed in equal measure.

Employees

The ownership of intellectual property created by a member of staff is often regulated by contract. In the absence of contractual provisions to the contrary, intellectual property (IP) which has been created in the course of employment will be the exclusive property of the employer. Equally where a member of staff has been employed specifically to develop a project giving rise to IP, all ownership rights will accrue to the employer.

However, where an individual has been employed primarily to lecture or tutor students and yet produces IP while in employment, the rights to that work will attach to the author of the works, and not to the employer. This is the case even where that work is produced during employment hours or where the employer's resources have been used.

Consultants who are engaged to work for a further education institution will generally retain IP rights in any work which is produced, even in the course of their engagement. This remains the case even where work is specifically commissioned by the employer. If the employer wishes to lay claim to copyright then an express assignation of copyright must take place.

Unfortunately it is impossible to legislate for all eventualities and there are inevitably some grey areas. It is therefore most prudent to make as much provision as possible in the employee's contract of employment regulating ownership of copyright and any other form of IP which is created during their time in employment.

Students

Universities and colleges must also consider ownership of copyright which arises from works created not only by their staff, but also by their students. In the case of undergraduate students it is generally the case that ownership of copyright will remain with the student who has created the work. For example, a student would retain the copyright to their dissertation or any essays produced as exam or course work. However, the situation becomes more complicated in the case of post-graduate and research students. The situation can be particularly complex where a student is involved in the creation of a spin-out company which has university or college backing.

In the case of research students who produce work which is protected by copyright, that copyright will automatically become the property of the institution where the research work is carried out. Again this is subject to any other written provisions which may have been agreed between the institution and student.

However, any agreement between student and institution to the contrary must be written and it is important that terms of ownership are agreed and regulated between the parties. It is also necessary to expressly provide for any licensing which has been agreed between the parties.

Third party rights

Matters become more complicated where a third party is also involved. It is becoming more common for further education institutions to seek to use the intellectual property generated by their staff or students. As stated above, by virtue of employment, universities and colleges often acquire the intellectual property rights generated by its staff and academics. Similarly IP generated by many research students will also transfer to the university or college. However, institutions will often waive those rights to encourage the flow of ideas and development of projects by their students and staff.

Where a sponsor is involved or where a university or college enters into a joint venture with a company to develop an idea, it is absolutely essential that detailed contracts are put in place to regulate the ownership and use of IP rights. Many commercial organisations sponsor research in return for the transfer or licensing of intellectual property rights. With potentially lucrative projects it is inevitable that one or more of the parties involved will wish to exploit the product commercially. The question of ownership and allocation of profit then becomes paramount. In such cases it is vital that measures to preserve confidentiality surrounding a project are put in place and that effective ownership and licensing provisions are put in place. Only then can an institution reap the rewards of its investment.

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This note is intended as a brief summary of Intellectual Property Rights in respect of copyright. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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