

Text approved by the UOC's Executive Board on 13 June 2022

## **REGULATIONS ON THE INTELLECTUAL AND INDUSTRIAL PROPERTY OF R&I ACTIVITIES AT THE UNIVERSITAT OBERTA DE CATALUNYA**

### **Preamble**

The main aim of the research, development and innovation activities (R&I) carried out at the Universitat Oberta de Catalunya (UOC) is to create and publish the results and knowledge arising therefrom and disseminate and transfer them to society. The UOC's inspiring principles include ensuring that everyone has access to knowledge regardless of time and space, as well as fostering research and innovation in the knowledge society.

The UOC's Statutes acknowledge that the UOC's founding purpose is to promote and provide higher education by creating, transmitting and disseminating culture and scientific, humanistic, technical and professional knowledge, and to enrich Catalonia's cultural and scientific intellectual heritage for the general advancement and sustainable development of society and the economy.

In addition, under Article 1 of the UOC's Organizational and Operational Regulations, the university's goals are "to foster and develop scientific research in every field of knowledge in which the university operates, particularly in the study of the knowledge society and the dissemination of knowledge, technology transfer, know-how and innovation in the fields of training and culture linked to an intensive use of ICT", with the UOC's students, teaching staff and administrative staff interacting and working together in the UOC's Virtual Campus, creating a university community that uses the internet to create, structure, share and disseminate knowledge.

### **Inspiring principles**

These regulations are governed by the following guiding principles: (i) the recognition of UOC staff as authors; (ii) the efficient management and protection of the intellectual and industrial property rights in the results of R&I activities carried out at the University, and (iii) the transfer of such results to society by granting commercial licences to third parties, publishing under open access licences works (literary, artistic and scientific, including software) and inventions owned by the UOC, subject to any framework and specific contracts or agreements that may have been concluded with third parties by the UOC and to the UOC's ability to reserve the exploitation rights in the R&I results if deemed appropriate.

The following key principles must also be adhered to by the university in the management of the intellectual and industrial property of the results arising from its R&I activities:

- Encouraging UOC staff to create R&I results.
- Working together with third parties to create works and inventions and disseminate technology and knowledge.
- Identifying R&I results and establishing their ownership and the rules governing the exploitation rights in them.

- Protecting the intellectual and industrial property rights in R&I results to record or register them, if appropriate, whenever deemed fit by the UOC.
- Keeping and disseminating records containing information about the intellectual and industrial property of the results of the UOC's R&I activities.
- Publishing, publicizing, disseminating and transmitting R&I results, and promoting their commercial and industrial exploitation, including by creating spin-offs of the UOC, under open access licences available to society, whenever deemed appropriate and subject to the provisions of any framework and specific contracts or agreements that may have been concluded with any third parties.

## Chapter I. Scope of application

### Article 1. Objective scope

The aim of these regulations is to establish and lay down the terms of:

- (i) the ownership and management of the intellectual and industrial property rights in the results of the R&I activities carried out at the UOC, whether they are collaborative or contracted, carried out by the UOC itself or promoted by it, or activities carried out in partnership with, or under assignments received from, third parties, companies or institutions;
- (ii) the recognition of moral rights in R&I results;
- (iii) the management and rules on the distribution of financial profit from R&I results;
- (iv) protection and maintenance, and
- (v) exploitation and dissemination.

### Article 2. Subjective scope

1. These regulations apply to all administrative and academic staff (teaching staff and researchers) at the UOC.

2. They shall also apply to the following staff:

a) Researchers or project team members in training, working with a grant or with their own or external funding on any of the UOC's doctorate programmes at the recruitment stage.

Researchers or project team members in training working with a grant from the doctorate programmes shall take part provided that: (i) the activities in question are directly related to the research being carried out by them, and (ii) they are occasional rather than habitual, such that their training is not thereby undermined or interrupted.

b) Researchers or project team members belonging to other universities.

Collaborators and experts from other universities, research centres and domestic or foreign institutions without an employment or service contract with the UOC, including visiting professors, provided that they have been authorized by the entity to which they belong and their external

involvement is governed in any event by a contract or agreement with the entity concerned laying down the terms of the R&I activity in which the UOC is involved.

c) External collaborators (occasional and hired experts).

The collaboration of occasional collaborators and hired experts involved in the UOC's R&I activities shall be provided for the exact duration of the work or service contract concluded to lay down the terms of their involvement.

3. These regulations apply to the UOC's faculties and UOC-recognized institutes or research centres as provided in Article 8 of the Organizational and Operational Regulations when carrying out R&I activities at the UOC.

## **Chapter II. Ownership and management of rights**

### **Article 3. Designation as author or inventor, and moral rights**

1. The UOC shall respect the right to be recognized as the individual or collective inventor(s) or author(s), with moral rights, of the results of R&I activities carried out at the UOC.

2. The author(s) or inventor(s) of R&I results must be mentioned in any exploitation or dissemination of such results by the UOC or in which the UOC is involved together with third parties.

### **Article 4. Ownership of results obtained by researchers or project team members with an employment contract**

1. Unless otherwise agreed in writing between the employees in question and the UOC, the exploitation rights in R&I results created by UOC employees when carrying out R&I activities at the UOC shall belong to the UOC.

2. In the specific case of inventions resulting from a research activity that does not impliedly or expressly fall within the purpose of the person's employment contract but that is related to their professional work at the UOC and that were conceived primarily as a result of knowledge acquired at, or the use of means furnished by, the UOC, and the rights to such inventions have not been contractually assigned to the UOC, the UOC shall be entitled to assume ownership of the invention or reserve the right to use it.

3. If the UOC assumes ownership of an invention or reserves the right to use it, the inventor(s) shall be entitled to fair financial compensation for an amount that takes into account the industrial and commercial importance of the invention and the value of the means or knowledge provided by the UOC and the contributions made by the inventor(s) themselves. Such financial compensation may be provided in the form of a share in the profits obtained by the UOC from exploiting the invention or assigning the rights to it.

4. Unless there is any evidence to the contrary, inventions for which a patent application or an application for any other form of exclusive protection is submitted within one year after the end of the employment contract shall be presumed to have been made during the term of the employment relationship as provided in Law 24/2015, the Spanish Patent Law.

### **Article 5. Ownership of R&I results obtained by researchers or project team members in training without an employment contract**

Ownership of the intellectual or industrial property rights in the R&I results obtained by researchers or project team members in training, working with a grant or with own or external funding in any of the UOC's doctorate programmes, shall pertain to the author(s) or inventor(s) themselves as provided in the applicable legislation on intellectual and industrial property. In any case, the UOC may only exploit the results obtained by the author and/or inventor with their authorization.

### **Article 6. Ownership of R&I results from R&I activities carried out with third parties**

1. R&I activities carried out by the UOC with third parties who are not employed by the UOC, whether they are natural persons or public or private entities, must always be formalized in writing by means of an appropriate agreement, contract or arrangement expressly setting out the terms governing ownership of the intellectual and industrial property rights in any potential R&I results, as well as stating the terms of use and exploitation and the terms governing the sharing of profits from exploitation, the management of the results' legal protection and the UOC's right to use the results of, and the knowledge resulting from, the R&I activity for research and teaching purposes.

2. R&I activities carried out in the context of domestic or international public calls for research shall be governed by the terms of the call in question.

3. Ownership of, and exploitation rights in, the results of R&I activities carried out by UOC employees outside their employment with the UOC fall outside the scope of these regulations and belong to their author(s) or inventor(s).

## **Chapter III. Reporting and protection of R&I results**

### **Article 7. Reporting the creation of R&I results, and duty to collaborate**

1. UOC staff are required to report to the UOC department in charge of managing the research and innovation activity in question the results, whether or not they are subject to protection, arising in the context of their involvement in the R&I activities carried out by the UOC within a maximum of two (2) months from the time they were created.

2. The communication can be made at the worker's own instance or through the relevant researcher or project manager, and it must include all the information and documents relating to the R&I result, including the extent, expressed as a percentage, to which each inventor or author was involved. Following receipt of the communication, the results shall be analysed and their value assessed and, if it is deemed appropriate, it shall be decided to start the necessary procedures to obtain legal protection for the R&I results, which must be carried out in any event before their publication or dissemination. The protection of the results of R&I activities carried out with third parties by the UOC shall be governed by the relevant agreement, contract or arrangement concluded by the UOC.

3. UOC staff who are considered to be the authors or inventors of R&I results must collaborate with the UOC as may be necessary to obtain protection for the intellectual or industrial property rights in the results and their subsequent exploitation or transfer if appropriate.

## Article 8. Protection of the results of R&I activities

1. The UOC department in charge of managing the research and innovation activity is responsible for assessing, within a maximum of six (6) months from the date of receipt of the communication reporting the creation of the R&I result, and with the collaboration of the UOC staff if appropriate, whether it is necessary and appropriate to start the procedure to protect the results of the R&I activity carried out by the UOC. The lead researcher or project manager of the R&I activity that led to the result shall be informed in writing of the resolution deciding whether or not to carry out the procedure for the protection of the R&I results.

2. In the case of inventions whose industrial property is subject to protection, if the resolution does not envisage starting the protection procedure or states that the invention should not be protected, the inventor(s) may ask the UOC for an assignment of rights or an exploitation licence for the R&I results.

3. If it is decided to start the procedure for the protection of the R&I results, such protection may be obtained by any of the following methods:

- a) By submitting a request to record or register the rights and associated information to the competent body or entity in the case of official registers.
- b) By carrying out the necessary procedures for protection before other organizations providing alternative protection mechanisms, or by using tools or systems for the protection of works.

4. The UOC, through the department in charge of managing the research and innovation activity, shall monitor the results of R&I activities belonging to the UOC as well as, if applicable, the industrial or intellectual property titles registered with the official bodies or entities or alternative protection systems that may have been carried out, as well as the framework and specific contracts or agreements governing the exploitation rights in the results and, if applicable, the waiver of rights by the UOC.

If the inventors or the UOC itself do not wish to register and exploit the R&I results, or if no agreement for their assignment or for an exploitation licence can be reached, the UOC will not apply for their protection by registration.

## Article 9. Confidentiality of R&I results

1. The UOC staff, as well as any persons involved in the UOC's R&I activities, regardless of the type of contractual relationship between them and the UOC, must observe the confidentiality of any information relating to such activities and their results and comply with the terms and deadlines envisaged for their dissemination, unless such dissemination has been authorized by the UOC or under the relevant agreement, contract or arrangement governing the R&I activity with third parties.

2. R&I activities carried out by the UOC in partnership with, or with the involvement of, third parties shall be governed by the confidentiality agreement included in the licences and framework and specific contracts or agreements concluded with those third parties to protect the confidentiality of the information and the results of the R&I activity.



3. No acts of dissemination or publication of R&I results that are subject to protection may be carried out until the UOC department in charge of managing the research and innovation activity has confirmed that the necessary procedures for protecting the results have been carried out.

## **Chapter IV. Dissemination and exploitation of R&I results**

### **Article 10. Dissemination of R&I results**

The UOC department in charge of managing the research and innovation activity shall work to promote and ensure the best possible dissemination of the results of the R&I activity.

The following principles shall be respected wherever possible when disseminating R&I results and other research-related information:

- The digital deposit and recording of all results (works, inventions and other research data) in the UOC's institutional repository (O2 repository) or other repositories with the same purpose.
- Making R&I results available to third parties, if possible under open access licences under which the results can be exploited in accordance with Open Science criteria (open source, open content), preferably, by way of example without limitation, with BY-SA Creative Commons licences (for content) or free software licences, ideally GPL licences (for software) under which the knowledge generated can be shared and publicized to society in general, in compliance with the UOC's Open Knowledge Institutional Policy.
- The dissemination of research data (in accordance with the data protection legislation) in accordance with the FAIR principles.
- Publicizing all the research results of research projects undertaken with public funds.

The implementation of the UOC's Institutional Open Knowledge Policy when publishing R&I results must be compatible in any event with the applicable policies of the R&I activity's funding agencies, with the editorial policies on scientific publications (suspension and embargo of publications), and with the provisions of the framework and specific contracts or agreements concluded with third parties.

### **Article 11. Exploitation of R&I results by the UOC**

1. The UOC department in charge of managing the research and innovation activity is responsible for establishing the mechanisms for the exploitation of the intellectual and industrial property rights in the UOC's R&I results, and their transfer to third parties, that it may deem most appropriate to fulfil its purposes, and it shall do this in accordance with the applicable legislation on intellectual and industrial property.

2. The UOC may exploit R&I results, which may or may not be subject to protection under the legislation on industrial or intellectual property:

- a) itself, directly;
- b) itself, indirectly; or
- c) by means of other exploitation methods with third parties.

The terms and conditions of exploitation and the financial regime governing it shall be established in each case.

3. The UOC shall encourage and endeavour to ensure in any event that the chosen exploitation method provides society with the maximum possible dissemination of, and open access to, the newly created knowledge and technologies.

#### **Article 12. Methods for exploiting R&I results**

1. Without prejudice to the publication and dissemination of results as provided in Article 10 of these regulations, the UOC department in charge of managing the research and innovation activity shall consider the following exploitation methods for the UOC's R&I results as a general criterion:

- a) Granting an assignment or exclusive or non-exclusive licence for the exploitation rights in the R&I results to the UOC author(s) or inventor(s) who created them.
- b) Granting an assignment or exclusive or non-exclusive licence for the exploitation rights in the R&I results, or an exploitation licence, to third parties.
- c) Granting an assignment or exclusive or non-exclusive licence for the exploitation rights in the R&I results to a technology-based company (spin-off) whose workforce includes UOC staff or in which the UOC has a shareholding.
- d) Holdings in technology-based companies (spin-offs).

2. If the UOC decides not to protect a given R&I result through its registration and no third parties, natural persons or public or private entities are interested in an assignment of the exploitation rights or in a licence for use, the UOC may inform the UOC staff inventor(s) so that they may, if they so wish, ask to have the rights assigned to them and start the necessary procedures to protect the R&I result in their own name, in accordance with the applicable legislation and in any event in accordance with the terms of any framework and specific contracts or agreements that may have been concluded with third parties.

The UOC's waiver must be reasoned and made expressly by means of a communication sent by reliable means. In such case, the rights shall be assigned to the inventor(s) free of charge, with the UOC reserving a percentage of any profit that may be obtained by the inventor(s) from the commercial exploitation of the results.

Contracts for the exclusive assignment of industrial and intellectual property rights shall always include a 'reversion of rights' clause in favour of the UOC: (i) both if the R&I results are not commercially exploited within the time stipulated in the assignment contract (which may not be more than 24 months from the date of the assignment); (ii) and if the assignee(s) has/have been unable to prove that they have made reasonable efforts to start the commercial exploitation; the UOC may exercise its right of reversion of the assignment of rights in the R&I results, in which case the contract shall be terminated and the assignee(s) shall be left with a non-exclusive licence for the commercial use and exploitation of the R&I result.

#### **Article 13. Technology-based companies**

1. The exploitation of the R&I results referred to in the preceding article may be carried out by creating a technology- and knowledge-based company (spin-off) directly related to the scientific and technical activity carried out at the UOC with the involvement of UOC staff, in which the UOC

may be potentially involved, with the exploitation rights in the UOC's R&I results being licensed to such company.

2. The UOC staff's stake and involvement in the company's share capital and activities must in any event comply with the UOC's internal regulations on the creation of spin-offs and the applicable legislation.

#### **Article 14. Distribution of profits from the commercial exploitation of R&I results**

1. The management and distribution of the profits from the exploitation of the results of the R&I activities governed by these regulations shall be subject in any event to the UOC's specific internal rules currently in force and shall be validated by the lead researcher of the R&I activity that led to the results and by the UOC department in charge of managing the research and innovation activity.

2. The net profit from the sale of the R&I results (assignment of exploitation rights) or from the grant of licences for their exploitation shall be distributed after deducting the costs of processing, management, maintenance and legal protection of the rights and of the valorization of the R&I results (including, among others, concept testing, dissemination materials and marketing costs) from the gross income obtained from the exploitation of the results in each case.

3. If the UOC staff who have contributed to the creation of the R&I results (works and inventions) are entitled to a share of the UOC's profits from the assignment or licensing of commercial and industrial exploitation rights, such share in profit shall be considered extraordinary remuneration and shall not affect their contractual relationship with the UOC in any way.

4. If the inventors/authors request a change to the co-invention/co-authorship percentages originally established between the various members of the team that helped create the R&I results, the request, which must be duly reasoned, must be sent to the UOC department in charge of managing the research and innovation activity. Following an analysis of all the information furnished by the research team, the applicable percentages shall be established by this department.

5. If the UOC department in charge of managing the research and innovation activity authorizes the exploitation of the R&I results (as provided in Articles 12 and 13 of these regulations), the total net profits from the exploitation of the R&I results shall be shared between the UOC and the inventor(s)/author(s) in the following percentages:

- Inventor(s)/author(s): 50%
- UOC: 50%

#### **Article 15. Conflicts of interest in R&I activities**

1. Conflicts of interest are any situation in which the obligations of the persons who are subject to these regulations may be in conflict with those of the UOC and affect the objectivity and independence of the activities carried out by them on the UOC's behalf.

2. As provided in the [UOC Conflict of Interest Policy](#), UOC employees are under a general obligation to inform the UOC of any actual or potential conflict of interest between their own personal or professional interests and those of the UOC that may arise in connection with the R&I activity in which they are involved and potentially affect their professional decisions. The person affected by the (actual or potential) conflict of interest shall provide the UOC with the necessary information and documents to analyse the case and make a decision about it, with the involvement of the UOC department in charge of managing the research and innovation activity if appropriate.



### **Transitional provision**

1. All framework and specific contracts or agreements governing aspects of the intellectual and industrial property of the results arising from the R&I activity concluded before the date of entry into force of these regulations must be adapted to their provisions no later than at the time of renewal and/or extension of such agreement, arrangement or contract.
2. The UOC, through the UOC department in charge of managing the research and innovation activity, shall update the administrative procedures, forms and questionnaires for the entry into force and dissemination of these regulations within six months from their date of entry into force.

### **Repealing provision**

1. The regulations on intellectual and industrial property for R&I activities approved by the UOC's Executive Management Committee before these regulations, as well as any other provisions that may be in conflict with the provisions of these regulations, are now repealed.
2. Any matters not covered by these regulations shall be governed by the legislation on intellectual and industrial property and any provisions that may supplement it.

### **Final provision. Entry into force**

These regulations shall enter into force the day after their publication in the UOC's e-services portal, subject to approval by the university's Governing Council.

## APPENDIX I. Definitions

The following definitions apply for the purposes of these regulations:

**R&I results:** All technology, knowledge or processes, works and information, among others, developed or created as a result of R&I activities by researchers or project team members who are subject to these regulations.

**Intellectual property:** The authors' exclusive rights to their intellectual works.

**Collaborative R&I:** Those activities carried out by the UOC for the purpose of taking part in an R&I project with different persons or entities in order to achieve one or more common goals or results.

**Contracted R&I:** R&I activities carried out by the UOC as a service to a third party for consideration.

**Author:** The natural person who creates the intellectual work (teaching and research staff, administrative staff, interns and students, collaborators and visitors).

**Databases:** Collections of systematically or methodically arranged works, data and other independent elements that can be accessed individually through electronic or other means.

**Work:** Results that are subject to protection by means of intellectual property rights. All original literary, artistic or scientific creations expressed by any method or on any medium, be it tangible or intangible, that is currently known or that may be invented in future. These include, for example: books, songs, including software, reports, original graphic designs and drawings, lectures, presentations and databases).

**Software:** A set of instructions designed to obtain a specific result from a computer. Software is protected as a literary work, not as a patentable invention.

**Industrial property:** Exclusive rights granted in relation to certain intangible creations. Examples of R&I results that are subject to industrial property protection include, among others, patentable inventions, utility models, industrial designs, semiconductor topographies and plant varieties.

**Industrial design:** An exclusive industrial property right on new and unique designs. A design is the appearance of all or part of a product resulting from the characteristics of its lines, contours, colours, shapes, textures, etc. A design is new when no other identical design has been made public before, and it is unique if informed users derive from it a different impression from the general impression that would result from any other design.

**Invention:** A result that is subject to protection by means of industrial property rights. This includes, among others, new products or processes involving an inventive step (i.e. that cannot easily be inferred from the state of the art) and have an industrial application.

**Inventor:** A natural person who creates an invention, utility model or industrial design.

**Trademark:** An exclusive industrial property right for the use of a sign that makes it possible to tell a company's products and services apart from those of any other company in the market. It can

include, among others, words, images, symbols, letters, numbers, three-dimensional shapes and sounds.

**Utility model:** An exclusive industrial property right over inventions, with a lower level of inventive step than patents, that has an industrial application and that, as well as being new and involving an inventive step, involves giving an object or product a configuration, structure or composition that endows it with a substantial advantage as regards its use or manufacture (i.e. it is characterized by its useful and practical nature).

**Patent:** An exclusive industrial property right granted in relation to an invention (products or processes that are new everywhere in the world, have an industrial application and cannot easily be inferred from the state of the art). It entitles the owner to decide whether the invention can be used by third parties and, if so, how.

**FAIR data:** Research data that comply with the FAIR principles, meaning that they are: findable, accessible, interoperable and reusable.

**Assignment:** A contract under which the holder of an intellectual and/or industrial property right grants that right to a third party, transferring ownership of the exploitation rights (financial rights). Authors' and/or inventors' moral rights are non-transferable and must always be respected by the new owner.

**Licence:** A contract under which the holder of an intellectual and/or industrial property right allows a third party to use and exploit it under the terms agreed between them as regards, among others, time, geographic scope, exclusivity, remuneration and maintenance.

**Exclusivity:** Both the licence and the assignment may be agreed as exclusive, in which case the licensee/assignee will be the only party authorized to exploit the rights covered by the contract. The licensor/assignor must refrain from engaging in any act of exploitation.

**Open source software:** Collaboratively developed software that is released under an open source licence or held in the public domain.

**Creative Commons:** A system of open licences that enables people to share, reuse and build upon knowledge resources while ensuring that authors retain their copyright.

**Open licence:** A licence of use granted free of charge under which the author, who is the owner of the exploitation rights, authorizes the general public to use the work without having to obtain the author's permission to do so, provided that such use is made in accordance with the terms of the licence.