

FUOC:

INTELLECTUAL AND INDUSTRIAL PROPERTY
REGULATIONS IN RDI ACTIVITY

2009

Table of contents

INTRODUCTION: GUIDING PRINCIPLES OF THE UOC'S RDI POLICY	3
1. SCOPE OF APPLICATION	4
1.1. Subjective scope (persons to whom the regulations are applicable).....	4
1.2. Material scope (results to which the regulations are applicable).....	4
2. INTERNAL MANAGEMENT OF INTELLECTUAL AND INDUSTRIAL PROPERTY IN RDI ACTIVITY	6
2.1. Guiding principles	6
2.2. Authorship and designation of the inventor	6
2.3. Ownership of the results	6
2.3.1. Results obtained by the FUOC's employees.....	6
2.3.2. Results obtained by the FUOC's students.....	7
2.3.3. Results obtained jointly with other people and institutions.....	7
2.4. Competent bodies.....	8
2.5. Management and protection of RDI results	8
2.6. Incentives to create, disseminate and exploit knowledge.....	9
2.7. Results generated by students	9
3. EXPLOITATION AND TRANSFER OF KNOWLEDGE, RESULTS AND TECHNOLOGIES	10
3.1. Internal exploitation of the RDI results by the FUOC	10
3.2. External exploitation of the results	10
3.2.1. Industrial property.....	10
3.2.2. Intellectual property	11
3.3. Transfer of rights and exploitation contracts.....	12
3.4. Distribution of the proceeds from the exploitation or licensing of rights	12
4. COLLABORATIVE AND CONTRACT RESEARCH	14
5. CONFLICTS OF INTEREST AND CLAIMS	15
5.1. Conflicts of interest in RDI activity	15
5.2. Claims	15
<i>TRANSITIONAL PROVISIONS</i>.....	16
REGULATORY BACKGROUND	17
CONCEPTS USED IN INTELLECTUAL AND INDUSTRIAL PROPERTY	19

INTRODUCTION: GUIDING PRINCIPLES OF THE UOC'S RDI POLICY

This basic goal of the research, development and innovation (RDI) activity carried out by the FUOC is to create, publish and disseminate the knowledge generated and to transfer technologies and knowledge to third parties, so that they are reverted to society.

The purpose of these regulations is to regulate the ownership, management, dissemination and exploitation of all of the results of the RDI activity that are eligible for protection, as provided in the regulations that are applicable at any given time on industrial and intellectual property.

The fundamental principles underlying these regulations are the recognition of the authorship and rights of the FUOC's staff and research groups, the protection and efficient management of the FUOC's industrial and intellectual property rights, the open access publishing of the results and the release under a free licence of the works (literary, artistic and scientific, including software) and inventions owned by the FUOC, without prejudice to the agreements and covenants that the FUOC may have concluded with third parties and the FUOC's entitlement to reserve rights if it considers this to be advisable.

Through the UOC Knowledge Transfer and Research Support Office (OSRT), the FUOC will establish the necessary services for managing the creation and dissemination of results and the transfer of knowledge and technologies, and, in particular, the selection of dissemination media for these purposes and/or the creation of business entities controlled by the FUOC (technology-based company, spin-offs), for academic, commercial and industrial exploitation of the results.

In accordance with the above and taking into account the regulatory background described in Appendix 1, the FUOC has established these regulations as a way to contribute to the development of its intellectual and industrial property portfolio and its transfer to society.

Structure of the regulations

These regulations have been divided into five parts:

1. The **scope of application** defines the people targeted and the works and rights regulated by these regulations. In particular, it refers to all the works and results created within the context of the RDI performed at the FUOC, both by its research and administrative staff and by collaborating staff and scholarship holders.
2. The **principles for an internal regulation of intellectual and industrial property** make up the basic series of principles that the FUOC must put in place to ensure effective management of the intellectual and industrial property generated by its collaborative or non-collaborative RDI activities.
3. The principles for a body of **regulations for knowledge exploitation and transfer** complement the principles addressing intellectual and industrial property, focusing more specifically on active transfer and exploitation of this property, irrespective of whether or not the activities are protected by intellectual/industrial property rights.
4. The principles for **collaborative and contract** RDI activity are those applicable to all types of RDI activity performed or funded jointly by the FUOC and the public or private sector, and, in particular, collaborative and/or contract RDI.
5. The principles on the **conflicts of interest** that may arise when the private interests of the staff to whom these regulations are applicable come into conflict with those of the FUOC.

1. SCOPE OF APPLICATION

The purpose of these regulations is to regulate the ownership, management and exploitation of all the research, development and innovation (RDI) results that are eligible for protection under the industrial and intellectual property regulations in force at any given time, said results generating or deriving certain rights in favour of the FUOC and which have been obtained solely by the FUOC employees who will be defined later on or with the assistance of other people, companies or institutions.

1.1. Subjective scope (persons to whom the regulations are applicable)

These regulations will be applicable to:

The FUOC's employees

- The teaching staff
- The non-teaching research staff: in-house researchers, researchers affiliated with the University (under an agreement with other institutions) and doctoral research fellows under an employment contract (IN3-UOC, FI, FPI, etc.)
- The FUOC's administrative staff
- Staff contracted by the FUOC to work on a specific work or service

Students

- Doctoral fellows under a grant (not employees)
- UOC doctoral degree students taking part in the FUOC's RDI through a project conducted by its teaching, research or management staff
- The students who perform their internship at the FUOC through a university-business educational cooperation programme or who take part in a RDI project conducted by the FUOC's teaching, research or management staff.

External collaborating staff

The regulations will be applicable to the results eligible for protection in which, in addition to a member of the FUOC, one or more people have been involved without any employment, functional or services relationship with the FUOC, said individuals having taken part in a RDI activity supervised or conducted by the FUOC through a business contract, a covenant with another institution or as visiting professors.

1.2. Material scope (results to which the regulations are applicable)

These regulations will be applicable to the results of the RDI activity (works, inventions and other intangible assets listed in Appendix 2) covered by intellectual and industrial property rights and similar laws. In particular, they concern the results covered by the following laws (and any complementary and/or substitutive law and/or regulation):

- Legislative Royal Decree 1/1996, of 12 April, approving the consolidated text of the Law on intellectual property
- Law 11/1986, of 20 March, on patents and utility models
- Law 20/2003, of 7 July, on the legal protection of industrial design
- Law 11/1988, of 3 May, on the protection of semiconductor topographies
- Law 3/2002, of 12 March, on the protection of plant varieties

These laws are applicable to the results obtained from a RDI activity carried out at the FUOC, under an employment or services relationship with the FUOC, or when their obtainment is attributable predominantly to the use of resources provided by the FUOC. They are also applicable to those inventions for which registration is applied during the year following termination of the employment, administrative or services relationship with the FUOC.

Lastly, these regulations will also be applicable when one or more people (authors, inventors, even students and private individuals) transfer to the FUOC the corresponding rights on certain works related with the RDI activity, and therefore, the FUOC owns all or part of their rights.

The FUOC's teaching material prepared by any of the individuals included in Paragraph 1.1 is excluded from the scope of application of these regulations.

The **works of students** are within the scope of application of these regulations only when they originate from RDI projects conducted by the FUOC's research, teaching or administrative staff, provided that it is wished to use these works for a purpose other than the students' assessment.

2. INTERNAL MANAGEMENT OF THE INTELLECTUAL AND INDUSTRIAL PROPERTY DERIVED FROM THE RDI ACTIVITY

2.1. Guiding principles

The principles guiding the management of the intellectual and industrial property deriving from the results of the RDI activity carried out at the FUOC are the following:

- Provide incentives for the FUOC's staff to create, disseminate and exploit the results of the RDI performed for teaching, commercial, industrial and social purposes.
- Collaborate with third parties in the generation and dissemination of knowledge and intellectual works.
- Identify the results and determine ownership of the rights with respect to such results.
- Protect intellectual and industrial property rights with a view to their registration, when applicable.
- Maintain and publicly disseminate the records and information on intellectual and industrial property at the FUOC (databases).
- Disseminate the results of the RDI under the open access philosophy, without prejudice to agreements with commercial and/or industrial sponsors.
- Publish and distribute the results, when possible and, as a rule, by default, under free content and software licenses.
- Foster the transfer of knowledge and RDI results to society and industry and their commercial and industrial exploitation, including by means of the creation of spin-offs by the FUOC.

2.2. Authorship and designation of the inventor

With respect to the results subject to the legal system governing intellectual property, authorship and the moral rights arising from the results of the FUOC's RDI correspond to the person or group of people who are responsible for generating these results. In the case of intellectual works created by more than one person, and particularly in the case of the results defined in Paragraph 2.3.3 of this policy, if it is not possible to separate the contributions, the people who have taken part in generating the results will be considered co-authors.

With respect to inventions and other intangible assets considered industrial property, the inventor and, if applicable, the author are entitled to be mentioned as such in the corresponding record and title of rights.

The researcher and the other authors and/or inventors of the results will be put on record as author(s) or inventor(s) (respectively) of the results in any activity to exploit and/or disseminate said results.

2.3. Ownership of the results

2.3.1. Results obtained by the FUOC's employees

Ownership of the rights of the results described in Paragraph 1.2, obtained by faculty and other employees (researchers, administrative staff, etc.) and doctoral research fellows under an employment contract, as a consequence of their RDI activity and which fall within the sphere of their work duties or activities regulated by Article 83 of Organic Law 6/2001, of 21 December, on Universities (the LOU), corresponds to the FUOC. The aforementioned is understood without prejudice to whatever provisions are contained in the contracts or covenants signed with public or private entities or natural persons under this article.

Ownership of the rights of the results of an activity carried out by the FUOC's staff that is not related with their work duties and which is carried out using their own resources and outside of their normal working hours, and the benefits, obligations and responsibilities arising therefrom, will correspond entirely to their inventor/author. In order to avoid conflicts (with respect to these people's obligation to work exclusively for the FUOC), these people will be required to notify the FUOC that they are carrying out independent research or work and give the facts of the case in question.

Furthermore, pursuant to Law 11/1986 on patents, the FUOC may claim ownership of the rights on the inventions for which a patent application or any other title of exclusive protection (whether national or for international extension) is filed within the year following expiry of the employment or service relationship of the staff to whom these regulations are applicable. In this case, the inventor will have to sign the corresponding transfer of rights to the FUOC.

The FUOC's employees and other people to whom these regulations are applicable will be entitled to share in the proceeds obtained by the FUOC from the exploitation and/or transfer of rights on the results of their RDI activity, as provided herein (in particular in Paragraph 3.4).

2.3.2. Results obtained by the FUOC's students

The FUOC will ensure that the industrial and intellectual property rights of the students will be recognized as provided in the corresponding regulations. In the case of results from RDI conducted or coordinated by FUOC employees – teaching, research or administrative staff – and which is not for their academic assessment, the students and other people who have participated actively in the generation of results will be considered authors.

In any case, for the FUOC to be able to exploit the results obtained by student interns involved in RDI activities and by doctoral fellows who are in the first stage of the scholarship (non-employment relationship), it will be necessary to sign a co-ownership agreement between the FUOC and the author/inventor, which at least states the percentage owned by each person, the identity of the person empowered to manage protection of the rights, and the terms of exploitation, pursuant to these regulations, if applicable. The OSRT will make available the corresponding document templates to employees, students and collaborating staff.

2.3.3. Results obtained jointly with other people and institutions

When people without any employment, functional or service relationship with the FUOC are involved in its RDI activity, the corresponding distribution of rights on the results (co-ownership) will be determined before starting the activity by means of the corresponding contract or covenant signed between the FUOC and the inventor(s) or author(s) and other participating bodies; the entity that will handle, if applicable, any registration procedure and international extension of patent protection; and the terms of exploitation of the rights. The OSRT will make available the corresponding document templates to the participants.

Specifically, these considerations will be taken into account in the following cases:

- Collaborations with public or private entities or natural persons not employed by the FUOC, formalized through covenants, agreements, or public calls.
- Contracts signed with companies or other types of entity under Article 83 of the LOU.
- Contracts signed under national research promotion plans and the European Union's 7th Framework Programme (or future Framework Programmes) or other international research programmes.

In such cases, the terms set forth in the cooperation agreement or covenant or consortium signed by the participants and/or, if applicable, the terms contained in the contract signed with the European Commission or with the body managing the corresponding research programme will prevail.

In any case,

- Unless agreed otherwise, the FUOC will only own that part of the rights that corresponds to the percentage of participation of its staff and other resources in the research activity (giving rise to a situation of co-ownership that will have to be regulated in the corresponding agreement).

- The proceeds corresponding to the FUOC (with respect to its employees) must be distributed in the same proportions indicated in Paragraph 3.4 of this document. Under no circumstances will any agreement made by contract or covenant affect the status as inventors/authors of the people to whom these regulations are applicable and, therefore, their mention must be upheld.

In all the covenants signed, it will be ensured that the FUOC has the right to use all the information, knowledge generated and results published from the research produced by its employees, research fellows and contracted staff for future research and teaching purposes.

2.4. Competent bodies

The Governing Council creates a Delegate Committee for Industrial and Intellectual Property whose task is to resolve procedures and propose decisions to the Governing Council on the protection and exploitation of the research results generated at the FUOC. Its members will be the Vice Presidents for Research, Innovation and Technology who will chair it, and two members appointed by the Governing Council from among its research staff.

The UOC Knowledge Transfer and Research Support Office (OSRT), as the body responsible for providing support to the RDI activity carried out at the FUOC and managing knowledge transfer, has the mission of assisting all people involved in RDI at the FUOC in creating, protecting, disseminating and exploiting the knowledge and the intellectual works created as a result of their RDI activities.

Assignment or licensing of rights on the protected results, in favour of the inventors/authors or in favour of third parties, will be carried out at the decision of the Governing Council's Delegate Committee for Intellectual and Industrial Property, after receiving the OSRT's report.

The OSRT will be responsible for coordinating the following procedures:

- Entry and maintenance (updating) in the relevant records.
- Negotiation of assignment or exploitation of the results, applying the criteria set forth in these regulations.
- Correct dissemination of the protected result in the spheres considered most appropriate, using the marketing and dissemination tools that are available, including distribution under a free licence.
- Ensuring of recognition of the authors' and inventors' authorship and rights.
- Maintenance of the database and archive contents and links to other archives and sources of public and private research results.

The OSRT is also the unit responsible for monitoring the registration, exploitation, abandonment and/or progressive release of all the rights on the results of the RDI carried out at the FUOC, pursuant to these regulations.

2.5. Management and protection of RDI results

With respect to the RDI results that it is considered desirable to protect, disseminate and exploit, the FUOC will be required to:

- a) Enter them, if applicable, in the corresponding registers and keep them up-to-date.
- b) Manage their exploitation or assignment, ensuring maximum return and rigour in their use and abiding by the principles set forth in these regulations.
- c) Provide adequate dissemination and publicity in the most appropriate areas that do not detract from their nature, in accordance with the principle of open access.
- d) Acknowledge authorship of the staff who have created the result (scientific, artistic or graphic work, invention, utility model, design, plant variety, etc.).

The authority for receiving and managing results that may be eligible for protection, publication and exploitation will be the OSRT, which will duly inform the area of the FUOC to which the researcher author/inventor belongs or is affiliated concerning the procedure chosen by the OSRT to manage the results of the RDI activity.

The faculty and researchers at the FUOC who generate any result eligible for protection under industrial or intellectual property rights in the area defined in these regulations must notify its creation to the FUOC, through the OSRT, before its publication or dissemination. On the basis of the results management process established by the OSRT for the RDI activity, the FUOC will provide all the documentation and information that may be necessary to protect the result. The author/inventor will cooperate with the FUOC in any action that the latter may undertake with respect to the protection, defence and exploitation of its industrial or intellectual property rights.

2.6. Incentives to create, disseminate and exploit knowledge

The FUOC will establish mechanisms for fostering the creation, dissemination and exploitation of the RDI results and will notify them to the people to whom these regulations are applicable. At the same time, it will offer information and advice on managing intellectual and industrial property in accordance with these regulations, the procedures that must be carried out to implement them, and the contact people.

The FUOC's research staff and other staff to whom these regulations are applicable will share in the proceeds of the commercial and industrial exploitation of their works and inventions in the proportions indicated in Paragraph 3.4 of these regulations.

Likewise, the level of the research staff's participation in knowledge creation and dissemination activities, in collaborations with entities and companies (pursuant to Article 83 of the LOU), and open access publishing of the results of their research activity will be included as a formal part of their assessment.

On the other hand, pursuant to Article 56 of Law 1/2003, of 19 February, on Catalan Universities, support will be provided to create and/or participate in enterprises directly related with the scientific and technical activity carried out by the FUOC (spin-offs) and other activities mentioned in this article. Accordingly, research staff may request a licence or unpaid leave to exploit the results in which they take part.

2.7. Results generated by students

In all the documents accepting doctoral degree grants, in the cooperative education agreements and in the other documents concerning activities that may lead to obtaining RDI results generated by students that are included in Paragraph 1.1 of these regulations and are eligible for exploitation, the students will be informed of the existence of these regulations, and the results ownership system considered appropriate in each case will be implemented. The OSRT will provide students and other participants in RDI activities with the necessary information and document templates.

The remuneration and degree of participation in managing the result eligible for protection will be the same as that applied to the FUOC's administrative staff, as provided in Paragraph 3.4 of these regulations.

3. EXPLOITATION AND TRANSFER OF KNOWLEDGE, RESULTS AND TECHNOLOGIES

The FUOC will consider all types of mechanisms for exploiting and transferring the results of its RDI. If it should be unable to exploit them on its own, it will seek partners to help it, upholding when possible the general principle of dissemination of the results under a free license (both works considered intellectual property and inventions, designs and other titles of industrial property) created and developed by the people to whom these regulations are applicable.

As owner of the rights to the RDI results to which these regulations are applicable, whether they be intellectual or industrial property, the FUOC will act diligently to foster their exploitation, releasing the result under a free licence, granting commercial exploitation licences, creating spin-offs and joint ventures, and seeking other forms of exploitation and/or collaboration with third parties. In any case, this exploitation will be carried out in accordance with the provisions of this Section 3 of these regulations.

In the absence of an internal or third-party exploitation, the FUOC may assign the rights on the results, as stated in these regulations, to their authors/inventors and, if they do not want them, will release them under a free license or will abandon them as explained below so that, 12 months after their creation and/or registration, all of the FUOC's RDI results are exploited or released.

3.1. Internal exploitation of the RDI results by the FUOC

The authors or group of authors of the FUOC's RDI results considered intellectual property (scientific publications, software, etc.) must consent to their internal exploitation and reuse (in particular, their transformation and redistribution), without prejudice to the freedom of use that may be granted in the terms of the licence used for public dissemination (for example, free software or content licence) in accordance with these regulations.

The results considered industrial property (inventions, utility models, brands, designs, etc.) registered in the FUOC's name may be used for not-for-profit academic and research purposes by the rest of the FUOC's community and the entities in its business group. The inventors' prior consent will not be necessary; however, express acknowledgement must be given to the corresponding inventors.

3.2. External exploitation of the results

The FUOC will support author and inventors in publishing, disseminating and exploiting the results of their RDI. As a general criterion, the OSRT will consider the following order for the exploitation of results:

3.2.1. Industrial property

In the case of results eligible for industrial property rights, as a general criterion, the OSRT will consider the following order of exploitation:

- a) Publication under a free licence of information about the object protected by the industrial property title.
- b) Transfer of ownership of the rights to the FUOC's staff and other authors/inventors who have generated them (paragraphs 3.3 and 3.4 will apply).
- c) Assignment of the ownership or licence to exploit the rights to third parties (paragraphs 3.3 and 3.4 will apply).
- d) If no company or person should show interest in purchasing exploitation rights and obtaining a license to use them within 12 (twelve) months after registration of the formal protection application (the period allowed by the right of priority), the FUOC will propose free transfer of the rights to the inventors/authors, reserving proceeds in favour of the FUOC (Paragraph 3.4 will apply).

- e) If even at that time the authors/inventors are not interested or no assignment or licensing agreement has been reached with them, the industrial property rights will be abandoned, after agreement by the Delegate Committee, who must notify it in writing to the OSRT.

3.2.2. Intellectual property

In the case of results eligible for intellectual property rights, as a general criterion, the OSRT will consider the following order of exploitation:

- a) Dissemination of the result under a free licence.
- b) Transfer of ownership of the rights to the FUOC's staff and other authors/inventors who have generated them (paragraphs 3.3 and 3.4 will apply).
- c) Assignment of the ownership or licence to exploit the rights to third parties (paragraph 3.3 and 3.4 will apply).
- d) If no company or person should show interest in purchasing exploitation rights and obtaining a license to use them within 12 (twelve) months after the publication of information about the result, the FUOC will propose free transfer of the rights to their inventors/authors, reserving benefits in favour of the FUOC, pursuant to Paragraph 3.4.
- e) If even at that time the authors are not interested or no assignment or licensing agreement has been reached with them, the OSRT will release them under a free licence, provided that the work's author has not notified any justified reservation against it.

A particular case of intellectual property: open access and free licences

The FUOC endorses the principles of open access of the results of its RDI in accordance with the EUA's recommendations at Barcelona in March 2008. Even so, their implementation must be compatible with the development policies of the agencies funding RDI activity in Spain and Europe and, in any case, without prejudice to the funding agencies' terms and policies (in Spain and Europe) that are applicable to the funded activity and/or the cooperation agreements with third parties.

Therefore, as a general criterion, the results of the RDI activity will be disseminated in accordance with the free distribution licence selected by the FUOC. In the case of academic and scientific publications, these licenses will not allow their transformation without the author's express consent.

When it is necessary because of the policies implemented by the publishers of academic journals and scientific publications or the agreements signed with third parties, the OSRT may suspend this open, free dissemination regulation and/or freeze the open access publication of the work for the term required by the publisher or for an indefinite period. The OSRT will decide this suspension or freezing on the basis of the author's written justification, explaining his or her wish or need to not publish the results in open access (for example, pursuant to the terms of an RDI support programme or agreement or scientific journals' publishing rules).

The authors/inventors will be responsible for notifying and justifying beforehand to the OSRT the need or wish to suspend open publication and dissemination of the results. Otherwise (that is, if they do not notify in due time), they will be liable for any consequence of publication of the research results by the FUOC.

In addition, the FUOC will consider financial support for the publication of research results as being under the *author pays* system, if it is justified. The authors/researchers will provide the necessary information to justify this funding.

For the purpose of implementing this open-access, free-dissemination regulation, an institutional digital repository will be created to file and publish the intellectual works that are the outcome of the FUOCs's RDI. This repository will be created and managed by the OSRT. In addition, the FUOC will contribute to external shared repositories (eg Recercat).

The research staff and other people taking part in the FUOC's RDI activities will place their scientific publications and other works obtained from this RDI in the institutional digital repository as soon as they are published, or earlier, if this is possible.

3.3. Transfer of rights and exploitation contracts

Pursuant to Paragraph 3.2, the FUOC may transfer ownership or the right to exploit the research results (whether they are intellectual or industrial property, such as, for example, patent rights, or rights on databases, software and/or complex technological systems, etc.) to the authors/inventors, individually or jointly with third parties, giving them preference over other people. If the authors/inventors are not interested in them, the OSRT may offer these rights to a public or private entity. In both cases, in exchange, these people must pay the FUOC the corresponding royalty defined in the transfer agreement, in accordance with paragraph 3.4. The tax expenses that may be payable on the manufacture or commercial exploitation of the rights will be for the account of the person acquiring these rights.

The person or entity acquiring the rights will assume all the guarantees given with respect to the product of their exploitation. In this respect, the FUOC and the people to whom these regulations are applicable will not have any liability to third parties and, therefore, will be released from any litigation that may arise from the commercial exploitation by third parties of the rights that have been transferred.

The OSRT will draw up the contract for the exploitation of the rights on the results and, if applicable, will provide support to the inventors/authors in negotiating this contract with third parties. The OSRT will provide potential inventors and authors with generic templates of contracts for the exploitation of the results and will assist in drafting the specific contract.

If a technology-based company/spin-off (TBC), affiliated with or controlled by the FUOC, wishes to exploit a result whose rights are owned by the FUOC, the latter may authorize transfer of the technology in exchange for a royalty whose specific terms will be set forth in the licensing agreement. Alternatively, the FUOC may agree to convert the transfer of rights into shares in the TBC's equity, regulating this conversion in an agreement approved by the Governing Council. The OSRT will be responsible for managing and establishing models and procedures with respect to TBCs at the FUOC.

In order to foster exploitation of the results of the FUOC's RDI activity, whenever possible, an escape clause will be inserted in the licensing or exploitation agreements under which the agreement will be terminated if the planned exploitation does not occur after a reasonable time has elapsed. In such cases, the FUOC is free to conclude a new exploitation agreement or release the results under a free licence.

3.4. Distribution of the proceeds from the exploitation or licensing of rights

In the event of commercial exploitation of the FUOC's RDI results, the following provisions will be applied regarding distribution of the proceeds.

In each case, the net proceeds (on the revenue from sales of the product(s) or licences based on the specific right) will be calculated by subtracting handling, administration (looking for third-party entities, etc.) and maintenance expenses from the amount of the license or the amount obtained from use of the results.

If there should be more than one inventor/author, it will be necessary to indicate how the corresponding shares in the proceeds are distributed. If this is not specified, the proceeds will be shared equitably.

If the authors/inventors, through the OSRT, should request a modification of these percentages, ultimate decision power on the royalties will lie with the Delegate Committee. In any case, when determining the percentage, the degree of participation in the specific right will be taken into account and, under no circumstances, will it be less than the values considered in similar previous operations in the same economic sector.

a) Preferential exploitation by the authors/inventors

In the case of preferential exploitation of the RDI results by its authors/inventors, agreed during the first 12 months after their publication or registration, the exploitation agreement will establish distribution of the net proceeds of this exploitation as follows:

- Inventor(s)/author(s): 50%
- The FUOC: 50%

b) Exploitation by third parties

The net proceeds obtained by the FUOC from exploitation by third parties of the RDI results will be shared between the FUOC and the researcher/author. These net proceeds will be distributed as follows:

- Inventor(s)/author(s): 50%
- The FUOC: 50%

c) Reservation of rights and sharing in the proceeds

In the event that the transfer to the authors/inventors indicated in Paragraph 3.2 takes place after 12 months and in the absence of any interest by third parties, the FUOC may reserve a right to share in the possible proceeds of their exploitation by the inventor/author. In this particular case, when income is obtained, the FUOC will recover the expenses incurred in administering and maintaining the rights until their transfer to the authors/inventors, and, after subtracting the expenses, the income will be distributed in the following proportion:

- 30% for the FUOC
- 70% for the authors/inventors

These royalties will be payable from the moment that the result is exploited by the authors/inventors or it is licensed or transferred by them to third parties.

4. COLLABORATIVE AND CONTRACT RESEARCH

Collaborative and contract research is compatible with the FUOC's mission and must be carried out in accordance with its objectives and values, and pursuant to the regulations approved for these activities and Article 83 of the LOU, without prejudice to abiding by the general principles of these regulations.

The FUOC will establish a body of specific regulations concerning industrial and intellectual property, duly approved by Governing Council, which will be managed and implemented by the OSRT under the supervision of the Governing Council's Delegate Committee.

5. CONFLICTS OF INTEREST AND CLAIMS

5.1. Conflicts of interest in RDI activity

A conflict of interest is understood to mean any situation in which the obligations of the staff to whom these regulations are applicable may come into conflict with those of the FUOC and may impair the objectiveness and independence of the activities performed in the institution's name.

The staff to whom these regulations are applicable will identify and notify the OSRT of any situation involving a conflict of interest, such as:

- Direct or indirect interests in RDI sponsoring companies or in the exploitation of the results.
- Similar activities performed by the staff outside of the FUOC.
- Research contracts or rights transfers with third parties related to the researcher/professor.

In this case, the individual will furnish the relevant information to the OSRT so that it may make a decision on the matter. Likewise, he or she will attend any meeting that may be necessary and, jointly with the FUOC, will make the necessary decisions to settle the conflict.

5.2. Claims

The OSRT will establish and make available to the research staff and other individuals involved in RDI at the FUOC the additional information, templates and forms that may be necessary to help them fulfil, interpret and implement these regulations.

Likewise, a procedure will be established by which the people to whom these regulations are applicable may ask for help, request an exception or claim and/or defend their rights with respect to the RDI activity carried out at the FUOC and regulated by these regulations.

Claims may be filed with the Delegate Committee, who will make the appropriate decisions to preserve the rights that, if applicable, may have been infringed, clarify the regulations or allow an exception to be made. The Delegate Committee will put into place appropriate mechanisms to ensure strict compliance with the provisions of these regulations (or their exception) and will be the competent body for settling any doubts that may arise as a result of their application.

If the person affected by a conflict of interest or who wishes to file a claim is a member of the Delegate Committee, this person will not take part in the decision made by the Committee.

TRANSITIONAL PROVISIONS

Adaptation to the regulations

1. Over a period of twelve months, counting from the effective date of these regulations, the FUOC, through the OSRT, will develop the administrative procedures for implementing these regulations, the templates and the forms. These procedures will include, among other things, the steps to follow to apply for registration of the works, and the templates for the rights transfer and exploitation contracts.
2. Likewise, over a period of twelve months, counting from the effective date of these regulations, all of the intellectual property held at the FUOC will be adapted to these regulations, paying particular attention to those referring to the institutional participation of the FUOC and the FUOC's staff in the results, and the distribution of proceeds to the inventors and authors.
3. Lastly, over a period of twelve months, counting from the effective date of these regulations, the FUOC, through the OSRT, will make known these regulations, the procedures and the templates that are approved.

Appendix 1

REGULATORY BACKGROUND

Rationale and need for a body of regulations

According to the **FUOC's Statutes**, its purpose is to support and deliver higher education by means of, among other things, the creation, transmission and dissemination of culture and scientific, humanistic, technical and professional knowledge, and the enrichment of Catalonia's intellectual, cultural and scientific heritage with the goal of furthering general social and economic progress and its sustainable development.

The **Organizational and Operational Regulations of the Universitat Oberta de Catalunya** [Decree 273/2003, DOGC no. 4013 - 19/11/2003] provide that students, faculty and the administrative staff interact and cooperate in the Virtual Campus and the FUOC, forming a university community that uses the Web to **create, structure, share and disseminate knowledge**. Likewise, the FUOC's basic principles include *putting knowledge within the reach of everyone, independently of time and space, and fostering research and innovation in the knowledge society*.

Article 1 of the same Decree provides that the University's objectives are *to foster and develop scientific research in all fields of knowledge where the University is present and, especially, in the study of the knowledge society and the dissemination of knowledge, technology transfer, know-how and innovation in the fields of education and culture associated with the intensive use of ICTs*.

On the other hand, the **Commission Recommendation of 10 April 2008 on the management of intellectual property in knowledge transfer activities and Code of Good Practice for universities and other public research organisations** recommends that the Union's Member States *encourage public research organisations to establish and publicise policies and procedures for the management of intellectual property in line with the Code of Good Practice*.

Regulatory framework

The establishment of a body of regulations on the protection, exploitation and dissemination of the results of the FUOC's RDI activity is encompassed within a complete regulatory framework.

The **Law on Catalan Universities** (Law 1/2003, DOGC 3826) provides that "the ministry with jurisdiction in universities and the universities themselves must drive the advancement of knowledge through investigative training, research and technological innovation. In addition, they must facilitate the process by which new knowledge and new technologies are taken to society, by putting into place suitable transfer mechanisms". Likewise, in its Article 26 – "Technology and knowledge transfer", it says that "the ministry with jurisdiction in universities and the public universities must adopt appropriate measures to promote technology transfer and knowledge transmission to society." Lastly, in its Article 67, it states that "the department with jurisdiction in universities and the universities themselves must support programmes to protect and exploit the universities' intellectual and industrial property in all the technology and knowledge transfer activities carried out by members and centres of the university community".

However, the ownership, protection, dissemination and exploitation of the results of RDI activity are regulated by different laws, depending on the result's nature. In particular:

- **Law 11/1986 of 20 March, on patents and utility models** (BOE no. 73, of 26 March 1986), provides in its Article 20 that ownership of the inventions made by the faculty as a result of their research function in the university and which form part of their teaching and research duties corresponds to the universities. The Law refers to each university's regulations to regulate the manner and amount of the participation in the proceeds obtained by the university in the exploitation or transfer of its rights on the inventions made by the university's faculty.
- **Legislative Royal Decree 1/1996, of 12 April, approving the consolidated text of the Law on intellectual property**, stipulates that the intellectual ownership of a literary, artistic or scientific work corresponds to the author due to the mere fact of having created it and confers upon the author the sole right to exploit it. However, there are two exceptions: Article 51 provides that, unless agreed otherwise in writing with the employee, *it will be assumed that the rights to exploit the work created by virtue of an employment relationship have been transferred exclusively and with the necessary breadth for the performance of the employer's usual business*. And, according to its Article 97.4 *when a salaried employee creates a computer program, in the performance of the duties that have been assigned to him or her or following the instructions given by his or her superior, ownership of the exploitation rights corresponding to the computer program created, both the source program and the object program, will correspond solely to the employer, unless agreed otherwise*.

Knowledge and technology transfer: give priority to open access and free and open-source software

As regards the **dissemination of results**, the previously mentioned Recommendation states that open access to research data will be promoted with a view to transferring the technology generated by public funding, in accordance with the OECD's *Principles and Guidelines for Access to Research Data from Public Funding* (taking into account the restrictions related to commercial exploitation). In this respect, a number of significant declarations have been published: those of Bethesda, Budapest, Berlin and Barcelona.

The **Bethesda Statement on Open Access Publishing** (20 June 2003) encourages *faculty/grant recipients to publish their work according to the principles of the open access model, to maximize the access and benefit to scientists, scholars and the public throughout the world. [...] regarding a record of open access publication as evidence of service to the community, in evaluation of applications for faculty appointments, promotions and grants."*

For its part, the **Recommendations from the EUA Working Group on Open Access** (28 March 2008) state that *Universities should develop institutional policies and strategies that foster the availability of their quality-controlled research results (in the form of research papers and other outputs) for the broadest possible range of users, maximising their visibility, accessibility and scientific impact.*

Lastly, with respect to software in particular, in the **Barcelona Declaration for the advance of free software**, of 18 May 2004, it is stated that in the **academic area**, *free software possesses certain characteristics that make it a focus of interest for universities. From the point of view of research, free software transfers the basic principles of the scientific model of the production of knowledge (free dissemination, review by experts, constant search for improvements, reproducibility of the results) to the field of software development, which has also become an essential tool for research in every field. ... Therefore, it would seem reasonable that free software should acquire ever greater importance for universities and that the main barriers to its use in research and teaching should be removed. It also states that Going even further than this, the model of knowledge sharing fostered by free software could be extended to other areas, such as the production of teaching materials, which could represent a complete revolution in the organisation of teaching. This trend could lead to a new teaching model, so giving rise to a true open environment for education. In the case of the **strategic area**, the release of the source code of programs, as occurs with free software, is a decisive stimulus to competitiveness and allows improvement, through cooperation, of the quality of the applications from the user's point of view.*

Thus, open access is based on publishing in free access journals or electronic archival of the publications in an institutional or shared free-access repository to give greater visibility, access and impact to the FUOC's RDI results.

Collaboration with third parties

In addition, part of the results of the RDI carried out at the FUOC is obtained through collaboration under a contract/covenant with private or public sector entities.

In this context, **Organic Law 6/2001, of 21 December, on Universities**, regulates the cooperation between the university sector and the business sector. Specifically, Article 83 provides that *the research groups recognized by the University, [...] and their faculty [...], may sign contracts with individuals, Universities or public and private entities for the performance of scientific, technical or artistic projects, and for the development of specialized tuition or specific educational activities; and that the Statutes, within the framework of the basic rules dictated by the Government, will establish the procedures for authorizing the projects and concluding the contracts mentioned in the previous paragraph and also the criteria for deciding the use of the goods and resources obtained with them.*

Conclusions

In the light of the above-stated legal provisions, and also taking into account the other regulations that establish the principles and mechanisms for protecting industrial and intellectual property, it is considered that it is necessary to have a comprehensive body of regulations that specifies the procedures for protecting and managing the FUOC's RDI results, establishing the instruments and human and material resources necessary for quality management of the RDI results, such that their effective dissemination and transfer are assured.

Appendix 2

CONCEPTS OF INTELLECTUAL AND INDUSTRIAL PROPERTY

For the purposes of these regulations, the following definitions are used:

1. Intellectual property

Pursuant to Legislative Royal Decree 1/1996 of 12 April approving the Consolidated Text of the Intellectual Property Law, **intellectual work** refers to any original work produced by the author's intellect. Intellectual works are recognized as those listed in its Article 10, including software programmes. **Author** refers to any member of the university community to whom these regulations apply (teaching and research staff, administrative staff, grantholders and students, collaborating and visiting staff) who have created an intellectual work.

Examples of results considered intellectual property are:

- Traditional works of intellectual creation (scholarship)
 - Scholarly publications: books, papers, publications in journals
 - Literary, scientific and graphic results of RDI activity (reports, software programmes, drawings and original graphic designs)
 - Material from conferences and congresses (recordings, presentations, etc.)
- Institutional works
 - Official publications on the FUOC's RDI activity
 - Research reports, studies, etc.
- RDI results, intended for more general publicising
 - Recordings of conferences and congresses
 - Multimedia works
 - Websites
 - Databases

2. Industrial property

Pursuant to the laws mentioned below, **industrial property** refers to the ownership of any of the titles granted by the corresponding offices and other rights that are mentioned in these texts.

- Pursuant to Law 11/1986, of 20 March, on patents and utility models,
 - **Patent** refers to the industrial property title granted by the Patent Offices to globally new products or processes for application in industry and which cannot be readily deduced from the state of the art.
 - **Utility model** refers to the industrial property title granted by the Patent Offices to inventions having a lesser degree of inventiveness than patents, consisting of a device, instrument or tool that is characterized by its usefulness and practicalness.
 - **Inventor** refers to any member of the university community who has generated an invention considered industrial property.
- Pursuant to Law 20/2003, of 7 July, on the legal protection of industrial design, **industrial design** refers to the title on the appearance of a product, either in its entirety or on one side, having a new, unique character, and which originates, in particular, from the characteristics of lines, contours, colours, shape, texture or materials of the product itself or its adornment. The design may be in two or three dimensions.

- Pursuant to Law 17/2001, of 7 December, on brands, **brand** refers to a title that grants the exclusive right to use a sign to identify a product or service on the market. It can include words, images, figures, symbols, graphics, letters, figures and three-dimensional shapes.
- Pursuant to Law 11/1988, of 3 May, on the protection of semiconductor topographies, **semiconductor topography** refers to the type of industrial property concerned with integrated electronic circuits. Its purpose is to protect the layout of the various layers and elements comprising the integrated circuit, its three-dimensional arrangement and its interconnections, which is what makes up its "topography".
- Pursuant to Law 3/2002, of 12 March, on the protection of plant varieties, **plant variety** refers to the title granted on any commercial variety, clone, line, vine or hybrid that meets any of the following conditions: its difference from existing varieties, its homogeneity in its overall characteristics, and stability in its essential characteristics.

Examples of results eligible for industrial property and similar rights:

- Inventions
- Utility models
- Industrial designs
- Semiconductor topographies
- Plant varieties

3. Contracts and assignments

- **Licence** refers to the contract in which the holder of one of the types of intellectual or industrial property described above grants to a third party certain rights of use and exploitation and establishes the corresponding terms of license (duration, territory, exclusive or non-exclusive, royalties payable, maintenance).
- **Exclusive assignment** refers to the contract concluded with a third party, granting it all of the holder's intellectual or industrial property rights on a specific result, which implies a transfer of ownership while retaining the recognition of the inventors or authors as such.
- **Co-ownership agreement** refers to the agreement which must be signed with other institutions, authors and/or inventors when the result to be protected is the outcome of work carried out jointly by members of the FUOC and other co-owning individuals and institutions.