

INTELLECTUAL PROPERTY RIGHTS

Policy Statement: The Policy to consolidate and to maintain Intellectual Property Rights/ Copyright during day to day official mechanism at IEC University. The Policy will also apply to outsiders and residents, of the University to the extent specified in these rules and procedures. Vide this policy, all officials and relevant person are to follow the policy and will not disclose or communicate, or copy information which may be highly commercial, sensitive, in any way to anybody except in case they have written instructions to do so.

This policy applies to all staff employed by IEC University and on the contracting Parties.

Definitions

- i. **Intellectual Property (IP)** is the term given to the productions of original intellectual or creative activity. **Intellectual Property Rights (IPR)** are the legal rights that exist in those productions. IPR include the following related areas: copyright, patents, designs, trademarks, plant variety rights, database right and analogous rights.
- ii. **Copyright** is an unregistered intellectual property right, which arises automatically by operation of law in the UK when a protectable work is created by a qualifying author, and there is no registration required. ('Protectable' here describes the class of copyright work, these are: literary, dramatic, musical and artistic works, films, broadcasts and cable programmes.) A copyright work must be original. (*Originality' has a relatively low threshold and is not to be confused in any way with whether a copyright work is novel or new. The term 'originality' only refers to the fact that the author must make some amount of effort to produce the work in the first place. The term 'literary' is merely a reference to a written work.*) Computer software is treated as a literary work and as such is protected by copyright in the same way as literary and artistic works. Sometimes computer programs may also be protected as patents. Specialist guidance on this should be sought from IEC University Business.
- iii. **Databases** are protected in one of two ways. Some databases can be protected as copyright works (see above) when the person compiling the database is judged to have used sufficient skill, labour and judgment in devising the compilation. Other databases are protected by a separate Database Right. This lasts for 15 years. Databases protected by Database Right tend to protect the content, as opposed to the organization and structure of a database. Even so, Database Right is a valuable intellectual property right.
- iv. **Patents** protect original inventions (subject to some exclusions) with industrial application. They are one of the strongest forms of intellectual property right, conferring a 20-year monopoly upon their proprietor and they are infringed even if there is no conscious copying. They have to be applied for and are granted by the state through the Patent Office. They must pass through a rigorous vetting procedure for compliance with the legal requirements, before they are granted. Patents are governed by the **Patents Act 1970**. One of the most important aspects of patent protection is that an invention must be 'novel' meaning that it must be new. Novelty can very easily be destroyed by disclosing the nature of the

invention before a patent application is made. For this reason, an invention or details about it should not be disclosed, for example in a scientific paper, poster, presentation (oral or written) or exhibition before an application is made to protect the invention.

- v. **Know-How** refers to technical expertise or practical knowledge and can encompass a broad and vague body of knowledge. In some cases this may be commercially valuable and can be exploited through consultancy or licensing and can be protected through the law of confidentiality.
- vi. **Design Rights** under English law can exist in unregistered or registered form. Design rights are in some ways similar to copyright but for three-dimensional articles. Registered designs protect the shape, configuration, pattern or ornament of an article to the extent that they are new and have “individual character”. The main legislation in the India is the **Designs Act 2000**.
- vii. **Unregistered Design Right** arises automatically by operation of law and, as its name suggests, it does not require to be registered anywhere. Unregistered design right is a proprietary right which subsists in an original design. "Design" for these purposes means the "design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article." Unregistered design right does not subsist unless and until the design has been recorded in a design document or an article which has been made to the design.
- viii. **Trade Marks** can be registered or unregistered. A registered trade mark is often much more valuable than an unregistered trade mark which can only give the owner a right to sue for passing off. It is more difficult and expensive to bring an action for passing off than for straightforward infringement of a registered trademark; so possession of a registered trademark is highly desirable. Registered trade marks are governed in the India by the **Trade Marks Act 1999**.
- ix. **Assignment** is the term given to the outright transfer of ownership of IPR from one person or party to another. It is often, but not always, done in return for a fee. Whilst transfer of ownership of physical property is achieved by delivery of the property from one person to another, intellectual property must be transferred in a written document which is referred to as an assignment.
- x. **Licence and licensing** are the terms given to the permission, which the owner of an intellectual property right may give to any other person or parties to use that IPR. Someone using an intellectual property right without a licence infringes that intellectual property right. The owner may charge a fee in return for the grant of a licence and can impose terms and conditions on its use as part of a licence. There is no transfer of ownership, just a licensing of use and it can be thought of as similar to hiring or renting out other forms of property. Licenses are usually divided as follows. A non exclusive licence means that the licensor himself can use the rights and he can have any number of licensees. A sole licence means that the rights owner can use the rights but can only create one licence in favour of his licensee. An exclusive licence means that the licensor himself cannot use the rights and only one licence can be created. As can be seen, an exclusive or a sole licence will tend to command more royalty rights or income than a non exclusive licence.
- xi. **Moral Rights** : A moral right is not an intellectual property right but is something which allows authors or film directors to assert their rights to be known as the author (the "paternity right") and to object to any derogatory

treatment of the right ("the integrity right"). The moral right is usually asserted where copyright is assigned and the assertion binds the assignee.

Policy

Copyright

1. IEC University recognizes the rights of its staff to ownership of copyright and other forms of intellectual property rights (IPR) in research publications, books and other similar publications in all formats derived from work undertaken during the course of their employment. It also recognizes the rights of members of staff to copyright and other forms of IPR in teaching materials in all formats. UCL waives its employers' rights to copyright in order to give effect to this.

The exceptions to this are:

- i. Institutional materials including reports, syllabuses, curricula, papers commissioned by IEC University for administrative purposes etc.
- ii. Materials generated by prior agreement, for which IEC University provides resources which are in excess of these normally available to members of staff.
- iii. Materials which are generated by prior agreement as ventures which involve sharing of copyright ownership between IEC University and members of staff.
- iv. Copyright in any software programme generated during the normal course of University employment
- v. Copyright in any designs, specifications or other works which may be necessary to protect rights in commercially exploitable intellectual property.

In these cases ownership of copyright vests in IEC University, as sole owner or as a part owner, except where otherwise agreed, Performance rights will be treated in the same way as copyright.

Registered and Unregistered Design Rights

2. These rights protect designs and exist in tandem to copyright in designs (see above). IEC University asserts its rights under Indian legislation to the ownership of design rights created during the course of the normal duties of employees or in the course of duties outside of those normal duties to which employees have been specifically assigned.

Databases

3. Databases are capable of protection through copyright for the arrangement of data or through the *sui generis* database right for the substantial investment in collecting the constituents. The ownership of database copyright vests as detailed in 'Copyright' above and ownership of the *sui generis* right vests with the employer in the same way as 'Patents' below. Databases are capable of commercialization and all such activity should be discussed with IEC University.

Patents

4. IEC University asserts its right under the Patents Act 1970 (39 of 1970) to the ownership of patents in inventions made in the course of the normal duties of employees or in the course of duties outside of normal duties to which employees have been specifically assigned.
5. Materials and Know-How can also be commercialized, either separately or with patents.
 1. Ownership of physical materials will vest in IEC University subject to funding conditions and should only be transferred from IEC university under an appropriate agreement.
 2. Know-How can be exploited and protected through the law of confidence. It may also be exploited by individual researchers through private consultancy. Staff are reminded that it is necessary to keep confidential information secret and to disclose it to third parties only in circumstances of confidence and preferably by reference to a Non-Disclosure Agreement.
6. Student IP is governed by the IEC University Policy Statement on Intellectual Policy Rights
 1. Students will own their own IP subject to any conditions imposed by their funding agreement
 2. Students who are using IEC University-owned intellectual property for their studies or are co-inventors with IEC University employees will assign all right and title in the invention to IEC university or its nominee in return for a share of future revenue in line with IEC University Revenue Sharing Policy

Licence

7. IEC University is granted a free, unconditional, irrevocable, perpetual, non-exclusive worldwide licence to use, for academic and commercial purposes, academic and teaching materials in all formats (now known or yet to be devised), which are generated by members of staff arising out of employment by IEC University.

Joint authorship

8. Where joint authorship is planned with an author(s) who is not an employee of IEC University, the member of staff should declare his/her copyright obligations to the co-author(s) and obtain a prospective agreement from the co-author(s) that these rights will be honoured .

Externally Sponsored Work

9. Ownership of IP in a project that is sponsored must be covered by the terms of the research contract between the sponsor and IEC University, and staff must be informed of the terms of that contract by the Head of Department at the start of the project. If the research contract involves ownership of IP by the sponsor, staff will be required to assign IPR to IEC University to enable IEC University to manage the contract.
10. Academic Departments are required to have adequate procedures for ensuring that IPR arrangements are implemented in a proper manner; these arrangements are subject to audit under the IQR process.

Leaving IEC University

11. In the event that a member of staff leaves IEC University, the institution retains its right, to that material under express licence . If IEC University wishes to change the material recognizably it accepts that it should seek permission from the author before doing so and come to an agreement on the copyrights in the material thus changed.

Publication

12. IEC University encourages its staff to assert personal copyright over material submitted for publication. Where the publisher has a policy of not granting copyright, staff are encouraged to submit a statement, a standard version of which will be made available by IEC University, to the publisher, asserting IEC University's right of licence to use the material without charge.

Copyright Officer

13. IEC University will appoint a Legal Officer who will advise staff on all copyright matters.

Revenue Sharing

14. Where staff are required to assign IPR to IEC University or where work that is licensed to IEC University is commercialized standard revenue sharing arrangements will apply.

Disputes and Appeals

15. IEC University has established an appeals mechanism consisting of a Staff IPR Appeals Panel. Any dispute regarding the assignment of staff IPR will be referred to the Staff IPR Appeals Panel (see Guidance s.9 below).

Conflicts of Interests

Exploitation of copyright ownership by members of staff could involve conflicts of interest which harm IEC University. This would arise where a competitive advantage is given to a third party or another institution. Instances of conflict of interest include:

- materials produced specifically for use by another institution or organization where significant competition with IEC University for students, resources or revenues is apparent
- generation and/or commercialization of materials the exploitation of which would harm sales of similar materials by IEC University or its licensees
- generation and/or commercialization of materials by a third party with which IEC University has an existing agreement for exploitation of similar materials.

Intellectual Property Rights Appeals Panel

1. Constitution

The following is the constitution for the panel which would consider appeals against decisions to assign IPR to IEC University:

Chair: To be appointed by the Chancellor in consultation with the Governing Body of IEC University, as and when the Panel needs to be convened

One member, to be appointed by the Chancellor in consultation with the Board of Management of IEC University, as and when the Panel needs to be convened

One further member to be selected by the Chancellor in consultation with the Academic Council amongst the IEC University's Executive Deans

Secretary: To be appointed by the Vice-President (International Affairs and Relations).

Note: Members of the Appeals Panel shall be asked at the time of appointment to declare any interest in or connection with the appellant which might be likely to prejudice their participation in the hearing

2. Terms of reference

To consider and determine any appeals against decisions by IEC University to assert its ownership of or to require an assignment of intellectual property rights to IEC University

Staff IPR Appeals Panel

1. Any appeal against a decision by IEC University to assert ownership of or require an assignment of intellectual property rights must be submitted in writing to the Secretary, IPR RELATED MATTER APPELLATE AUTHORITY, IEC University within Thirty days of the date of formal notification of the decision against which the appeal is being made. All documentation pertaining to the grounds on which the appeal is made must be submitted at the same time. No further communications will be accepted for consideration under an appeal after this time.
2. Such an appeal should normally be made only on one or more of the following grounds:
 - a. The consideration of the matter to assert IEC University's ownership of or require assignment of IPR to IEC University was not conducted according to the proper procedure.
 - b. Fresh material has become available which was not, and could not reasonably have been, available to those responsible for making the decision to assign IPR to IEC University.
 - c. The decision to assign IPR to IEC University was unreasonable or unfair.
3. As soon as is practicable after receipt of the appeal the Secretary, shall present the relevant minutes/ reports/ records of the decision to assign IPR to IEC University, to the Appeals Panel. The appellant will be given full access to such documentation.
4. An appeal hearing will be convened to hear the appeal, unless the appellant requests and the panel agree, that the appeal can be determined by correspondence.
5. Where a hearing is to be set up the Legal Officer shall inform all the parties of this and will make the necessary arrangements for the appeal to be heard as early as possible.
6. The Panel shall have power to reverse or modify the decision appealed from in any way that it thinks fit.
7. The appellant shall be invited to the hearing and may attend throughout except when the Panel deliberates upon its decision.
8. The appellant may be accompanied at the hearing by a workplace colleague or a trade union representative.



9. The Appeals Panel may invite such other persons to the hearing and seek evidence from them as it sees fit. They will normally request a response and attendance at the hearing for the individual who took the decision to assign IPR to IEC University.
10. Procedural matters for a hearing of the Panel other than those prescribed in this procedure shall be determined by the Panel as it sees fit. The Legal Officer of IEC University will provide the Appeals Panel with guidance as to the operating of hearings.
11. The Panel shall deliberate on its decision in private and this will be conveyed to the appellant in writing, with reasons, by the Legal Officer of IEC University.
12. A decision of the Panel shall be final as far as internal IEC University procedures are concerned.

Annexure Assignment Form

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ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS IN STAFF WORK

As a general principle, IEC University recognises a member of staff as the owner of any IPR he/she produces while employed by IEC University. This principle may be subject to variation in the case of collaborative or externally sponsored work, types of IPR whose ownership automatically resides with IEC University, or other exceptional circumstances. Accordingly this form transfers ownership of the intellectual property rights in your work to IEC University.

Further details on intellectual property rights can be found in IEC University *Guidance to Staff on IPR Issues*. You may also consult the Legal Officer of IEC University if you require further information.

Assignment of ownership of intellectual property rights

I the author/owner confirm that I assign ownership of all intellectual property rights in the work described below to the governing body of IEC University.

The title to all intellectual property rights in the following work is hereby transferred to the governing body of IEC University.

Signed:

Date: