



INTELLECTUAL PROPERTY RIGHTS CELL
UNIVERSITY OF KOTA
MBS Road, Kota, Rajasthan, India-324005



Draft
IPR POLICY
FOR
UNIVERSITIES

Department of Science and Technology,
Government of Rajasthan

Overview

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks, or copyrighted works to benefit from their work or investment in a creation. Intellectual property plays an important role in providing a competitive edge to an organization. Intellectual property rights can not only be used as a tool to protect creativity and generate revenue but also to build strategic alliances for socio-economic and technological growth.

This policy document has been framed to encourage an ethical environment to conduct creative research and to recognize the importance of innovations, assisting innovators so that the innovations are translated into products, processes, and services. Further, the translated products, processes, and services could be utilized in society providing benefits to the University as well as the creators involved. Such innovations and creative research may lead to the evolution of intellectual property know-how, copy-rights, designs, instruments, devices, processes, specimens, software, and other inventions having potential for commercialization with or without the registration under different Acts enacted by the Government for protection of intellectual properties.

Objective

- *To provide academic freedom and safeguard the IPR of all those involved in devising the innovation at the University.*
- *Ignite and improve the standards of the research matching the levels which can be translated easily to IPRs.*
- *To provide guidelines for the innovations in the institute or associated with the institute to commercialize IPR through bilateral and multilateral agreements, technology transfer mechanisms thereby safeguarding the interest of the creators/licensees of the IPR and in the process generating revenue for the institute and the creators or licensees.*
- *Make the inventor(s) of IP aware of the applicable laws and rules for ensuring their compliance.*
- *Establish an IPR management policy and procedural guidelines, making the inventions and discoveries made in the course of research carried out in the institute available to the public.*
- *Promote, facilitate and provide incentives to the inventor(s) who take initiatives to transfer University IP to the public.*
- *Help in introducing prudent IP management practices within the University to promote an IPR culture.*

IPR Cell- Administrative Setup

The IPR Cell will have a team of individuals having defined roles & its constitution would be as follows:

S.No.	
1.	Coordinator (Chairperson)
2.	Two faculty members from Basic Sciences/Engineering-Member
3.	Two IP expert (Consultant/Intern/Law faculty member)-Member
4.	Two Research Scholars

The tenure of the members of the IPR cell shall be three years and the cell should be responsible for the administration of all decisive issues related to IP policy and other relevant matters as should be determined from time to time.

Screening of requests for a patent will be done by IPR Cell. IPR Cell will keep a record of patents in the University as well as negotiate a transfer of technology (ToT). IPR Cell will screen requests for patents and selection of potential proposals on the prescribed IPR disclosure form after getting inputs (preferably prior art search) from area experts, a legal opinion from within and outside University as deemed fit by Chairperson, IPR Cell.

1.1 Roles and Responsibility

- IPR Cell shall be responsible for overseeing the implementation of all recommendations and decisions about IPR in the University.
- The chairperson shall be the responsible authority for entering into Agreements, Memoranda of Understandings, Confidential Disclosure Agreement (CDA), Material Transfer Agreement (MTA), and licensing agreements of the patents and copyright.
- Chairperson will have the authority to create or amend administrative mechanisms from time to time because of changing needs including creating administrative bodies and entrusting roles and responsibilities to various individual(s)/existing entities for evolving detailed procedures to facilitate the implementation of IPR Policy with approval from competent level.
- IPR Cell will have the authority to make changes in the IPR Policy or bring out the new policy as and when it is felt necessary. This can happen because of changes in governmental policies or national and international developments such as treaties and legal judgments.
- The creator should also bear the responsibility for these legal instruments and would be signing these documents as a creator as well as shareholder of the royalty so generated.

1.2 Appeal Procedure

- In case of any conflict, grievance regarding ownership of IP, processing of IP proposals, procedures adopted for the implementation of IPR Policy and interpretation of various clause of IPR Policy, any aggrieved person can send the appeal to the IPR Cell, and IPR Cell shall recommendations will be submitted to the V.C. of University or his/her nominee, whose decision shall be final.
- In case of violation/infringement of IPR such as patents by faculty/student/project staff/supporting staff/visitor or any third party, the University will refer the matter to IPR Cell to investigate and will take final decision for resolution of such infringe. In case of any third party infringing upon the IPR of the University, the IPR Cell would investigate and make a recommendation to the Vice-Chancellor for any legal course of action, if required.

Ownership of IPR

2.1 Types of Activities leading to Generation of IPR

- Research has taken up by a faculty/student/project staff/supporting staff /visitor in the normal course of his/her appointment/engagement at the University with funds coming from the University (this would also include research projects undertaken by students under the supervision of the faculty member);
- Research has taken up by a faculty/student/project staff/supporting staff/visitor from funds coming from a sponsor such as the Government of India, State governments, international agencies, or foreign governments, etc.;
- Collaborative research was undertaken with other institutions including government departments and agencies, PSUs, and private companies located in India;
- International collaborative research with institutions and companies located outside India;
- Research supported by companies and other private organizations through research projects or consultancy assignments; and
- Any combination(s) of the above

2.2 Ownership Criteria

2.2.1 Patent, Copyright on Software, Industrial design, IC layout design, and new plant variety

(A) Intellectual property is owned wholly or exclusively by University if:

- It has been developed either solely with the use of funds/facilities provided by the University or with a mix of funds/facilities of the University and external agencies but **without any formal associated agreement**
- It has been developed with the use of external funds/facilities, including, that sponsored research and consultancy projects without any associated agreement.
- It has been developed under any contract arrangement including “work for hire”, work commissioned and/or outsourced by the University.
- It has been developed according to a written agreement where ownership has been transferred to the University.
- It is not assignable to an individual or a specific group of identifiable contributors, i.e. software or technology or process developed over a while with contribution from different individuals of/for the University.

(B) Intellectual property can be owned by Third-party (ies) (exclusively or jointly with the University) if:

- It has been developed with external funding from Third-party (ies) including sponsored research, consultancy projects, and other collaborative activity(ies) with a formal associated agreement.
- It has been developed without external funding from third parties under collaborative project(s) or activity(ies) with Third-party(ies) with an associated agreement(s).
- It has been developed out of the work carried out by the University faculty/student/project staff/supporting staff during their visit to a Third-party Institution/organization.

For sharing of IP in case of sponsored research and consultancy projects or any other collaborative activity, the following guidelines shall be followed:

- If the funding agency allows the University to own the IP, then the University may share its rights with other Third-party(ies) subject to their respective contribution.

- In the case of funds provided by an agency of the Government of India, the ownership shall be decided in compliance with the ownership clauses defined by the funding agency at the time of approval of the activity(ies).
- In case of funds provided by a non-government agency - the owner may be shared between the University and the funding agency. The sharing may take into consideration the relative contributions of parties involved as well as any background IP with respective parties. Waiver of joint ownership can be considered by the University on recommendation(s) of the involved Inventor(s) or Lead Inventor based on the adequacy of compensation provided to the University.
- For a multi-country/multi-institutional collaborative project, there must be an explicit agreement defining the ownership of IP generated.
- Normally, IP will be shared among only those parties that contribute towards the creation of IP through the direct involvement of their human/other resources.
- In the case of collaborative activity with foreign institutions involving indigenous biological material, IP ownership has to take into account restrictions as per the prevailing 'Biological Diversity Act 2002' of India.

(C) The Intellectual property can be owned by the Inventor(s) if:

- None of the situations defined above for the University or Third-party ownership applies, and the IP is unrelated to the inventor's engagement with the University. For faculty and staff, the engagement implies responsibilities associated with employment. It is also expected that the person concerned would have pursued these activities outside of the normal working hours of the University.

2.2.2 Copyright other than Software

(A) **The copyright owned by the author(s):** The copyrights are owned by the authors for textbooks, research books, articles, monographs, teaching-learning resource materials, and other scholarly publications unless restricted by an associated agreement. These may also include popular novels, poems, musical compositions, other works of artistic imagination, etc. It is advisable to keep the University informed about such creations.

(B) **The copyright owned by the University:** The copyright is owned by the university if the work is created under any contract.

(C) **The copyright reassign able to Authors:** Copyright works that are normally assignable to the University may be reassigned to the author on request of the author provided it does not violate any agreement with the Third-party and does not intervene/harm the interests of the University.

(D) **Copyright owned by student:**

- Copyrights of a thesis, dissertations, term papers, laboratory records, and other documents that are produced by a student during the course of his/her study will reside with the student unless restricted by an associated agreement and/or research carried out using facilities that have come to the University with pre-imposed IP protection restrictions.
- For claiming ownership of the copyright for thesis and dissertations, the student(s) has/have to declare that the thesis does not include any information that needs IP protection by the University.

2.2.3 Waiver of IP Rights by the University

Subject to any associated agreement and with appropriate approval from the sponsor, the University may waive its rights to specified intellectual property in favor of the inventor to enable the inventor to seek funding or other support for the purpose of commercialization, or the Institute assessment doesn't favor IP protection. Such waiver of ownership in favor of the inventor(s) can be considered-

- if it is established that such ownership of the inventor would be essential to enable dissemination of benefits of the invention to the society, or
- If the University decides not to pursue the protection of IP within a period of six months of complete disclosure by the inventor to the University. The decision to pursue or not to pursue should be communicated to the inventor within a period of three months of complete disclosure by the inventor to the University.

In all cases, unless explicitly agreed to, the University shall normally retain a perpetual, royalty-free license to use the intellectual property and any corresponding IP for research and educational purposes.

2.2.4 Copyrights Owned by Third Parties

(A) Software:

It is expected that the University's faculty/students/project staff/ supporting staff/visitors would understand the obligations made to the Third-party related to software and databases. The

faculty/students/staff/project staff/visitors may be engaged in developing software or other IP using software, which is not in the public domain and is proprietary to certain suppliers. It is usual for the University to procure such software for education and research purposes. Many such licenses may have restrictions on IP creation and /or its commercial use. It is important that, if there are any restrictions in the software employed for such IP creation, the same are settled with the owner/supplier of the software, before initiating IP protection.

The software of general use shall be procured with a valid license.

(B) Other Copyright Material:

The University and its faculty, students, supporting staff, project staff, and visitors

- will respect protection offered by Indian copyright law to all copyrighted material,
- would use copyrighted materials for only personal use, teaching, and research purposes as permitted by Indian law, and
- would not use copyrighted material in their thesis, publications, reports, and other professional documents without taking explicit prior permission of the copyright holder.

2.2.5 Anti Plagiarism Policy under Copyrights

The Universities should establish the mechanism to increase awareness about the responsible conduct of research and academic activities, promotion of integrity, and deterrence from plagiarism. Hence, the following pointers should be adhered to:

- Every University shall declare and implement the technology-based mechanism using appropriate software to ensure that documents such as thesis, dissertation, term papers, reports, publications, or any other such documents are free of plagiarism at the time of their submission.
- Every student submitting a thesis, dissertation, term papers, reports, or any other such documents to the University shall submit an undertaking indicating that the document has been prepared by him or her and that the document is his/her original work and free of any plagiarism.
- Every faculty/researcher and M.Phil/PhD student should be provided an account in plagiarism detection tools for checking the content of their scripts.
- The undertaking shall include the fact that the document has been duly checked through a Plagiarism detection tool approved by the University.

- The University shall develop a policy on plagiarism and get it approved by the relevant statutory bodies of the University.
- Each supervisor shall submit a certificate indicating that the work done by the researcher under him/her is plagiarism-free.
- The University shall submit to INFLIBNET soft copies of all M.Phil., Ph.D. dissertations, and theses carried out in its various departments after the award of degrees for hosting in the digital repository under the "Shodh Ganga e-repository" program.
- The University shall create Institutional Repository on the institute website which shall include dissertation/thesis/paper/publication and other in-house publications.

Transfer of IPR

3.1 Policy Related to Transfer of Biological Resource and Associated Knowledge

The Biological Diversity Act 2002 of India regulates the access to Biological resources of the country by noncitizens, non-residents of the country as well as a body corporate, association, or organization not incorporated or registered in India. The Act prohibits such persons/entities from obtaining any biological resource occurring in India or knowledge associated thereto for research or commercial utilization or for bio-safety and bio-utilization. The Act prevents any person from transferring the results of any research for financial consideration or otherwise to such persons/entities without prior approval of the National Biodiversity Authority (NBA).

3.2 Policy for IP Licensing and Assignment

Licensing intellectual property to a third party is the most common modality for technology transfer leading towards commercialization. There are various modes of licensing strategy including the following:

Exclusive licensing: The licensor licenses the IP only to one licensee. In other words, the licensee is the only one authorized by the licensor to use and exploit the IP. Even the licensor is excluded from using and exploiting the IP.

- Sole licensing: In this case also, the licensor licenses to only one licensee. However, under this licensing, the licensor can also use and exploit the IP.
- Non-exclusive licensing: In this type of licensing, the licensor is permitted to enter into agreements with more than one entity for use and exploitation of the IP. In other words, the same

IP may be used by many licensees at the same time for the same purpose or for different purposes.

- Sub-licensing: Sub-licensing is applicable when a licensee wishes to further license the IP to another party(ies).

The following guidelines apply to a license agreement with a Third-party:

- i) generally no entity shall be granted an exclusive right for the development/commercialization of intellectual property owned by the University.
- ii) if an entity is granted exclusive rights concerning a particular IP, the same should be for a limited period to obviate the possibility of misuse/no-use.
- iii) sub-licensing must be specified whether it is permitted or not, and even if permitted, whether the consent of the licensor is required or not should be clearly stated in the license agreement.
- iv) the University and its inventors should be protected and indemnified from all liability arising from the development and commercialization of a particular intellectual property.
- v) wherever applicable, it should be ensured that the licensing process does not restrict the research/publication rights as well as the incorporation of necessary material in the thesis of the associated student inventor(s).
- vi) will not place restriction(s) beyond the inventor(s) on the University from entering into research and development in the same area independently or with other organization(s).

Assignment of IP by the university to another party may be carried out under the circumstances such as conditions by the government or its agencies, defense purposes or if the IP created distinctly accrues benefits to the society at large.

3.3 Policy Related to the Use of Name of the University and Trademarks Owned by the University by Third Parties

The University would allow the use of its name and trademarks owned by it to the Third-party(ies) to whom IP has been licensed/assigned through a signed agreement on the following conditions:

- (a) IP is intended to be used for the benefit of society.
- (b) IP is licensed/assigned with an undertaking from the licensee/assignee that IP will be used-
 - responsibly to create a product/process conforming to environmental safety, and good manufacturing practices promoted by the Government of India and its regulatory bodies.
 - in promoting truthful claims and information, i.e. not for misleading the society or users.

- without any liability to the University in case of misuse of IP or accidental damage accruing due to use of IP.

(c) In no case IP will be used against the interest of India.

In all such cases, the licensee/assignee must take prior approval of the University about how the name of the University and its trademarks are to be used in any media including print and electronic media.

3.4 Implementation Process

1. Forward a proposal prepared by the concerned investigator/inventor to the IPR Cell outlining the wish to file a patent application with the main highlights of the invention requesting to forward the application to the IPR Cell for prior-art search (novelty search) or to PIC, Department of Science and Technology, Government of Rajasthan for the same.
2. IPR cell will screen the application for IP filing after having Patent Search Report to assess patentability. Service of experts and members of PIC, DST, and GoR can be availed through proper channels.
3. If found patentable as per the Indian Patent Act, 1970, IPR cell may forward the potential cases to PIC, DST, GoR for patent filing through PFC, TIFAC DST, GoI.
4. The IPR Cell also may decide to file for a patent through alternate means i.e. private patent agent/attorneys in case of urgency in procuring Patent application No., based on case to case basis. All filing and post-filing fees, attorney fees, etc. in these cases, will be met out of the allocated budget of IPR Cell or from University resources.
5. For a joint patent to be filed in name of the University along with the funding agency: The costs and benefits will be shared between the joint applicants as per the signed MoU of the project funding agency.

Revenue Sharing

- The net earnings generated by the exploitation of IP will be shared between the Inventor(s) and the University on a 70:30 ratio.
- In case the patent filing costs are not borne by the University, the inventor can first deduct the costs incurred in this regard and maintenance of such patents, till licensing, from income accruing from the commercial exploitation of the patent. Excess income beyond such recovered costs will be shared with the University.

- In case there is a third party, the respective shares of the University and inventors will be calculated on the net receipts after deducting the third party's share.
- The inventor's share will continue to be paid irrespective of whether or not the individual continues as an employee /student/ research scholar of the University.
- Co-inventors of IP should sign at the time of disclosure or file for IP protection, a distribution of the IP earnings agreement, which should specify the proportional percentage distribution of earnings from IP to each co-inventor. The inventor(s) may, at any time, by mutual consent, revise the distribution of the IP earnings agreement.
- If there is only one inventor of the IP, the whole amount of the inventor's share will be retained by the inventor. If there is more than one inventor, the inventor's share will be distributed among the co-inventors on the mutually agreed terms and conditions.
- If there are two inventors, the principal investigator/supervisor/team leader will get up to 60%, while the co-inventor will get at least 40% of the inventor's share by mutual agreement.
- If there are more than two inventors, the principal investigator/ supervisor/ team leader will get up to 60% of the inventor's share and the rest will be distributed among the co-inventors in the proportions on the mutually agreed terms and conditions at the time of IP disclosure or at the time of filing for IP protection.
- Students/Project staff may have a share in the revenue earned but the share in case of 'work for hire' is not as a right, but maybe as an incentive at the sole discretion of the principal investigator or supervisor in consultation with the IPR Cell, if the need arises.
- Revenue sharing is not necessarily concurrent with the inventor-ship. Mere assistance like assistance in the preparation and conduct of the experiments, data analysis, etc. does not entitle one for inventor-ship but may entitle for revenue sharing as an acknowledgment of intellectual contributions for routine/mechanical contribution at the sole discretion of the Principal Investigator/ Supervisor of the work.
- If an inventor is unable to be contacted/traced for one year because of lack of information, the revenue corresponding to his/her share will be credited to the IP fund.
- Of the University share, 50% will be used for creating a University's IP fund, which will be utilized for any activity related to commercialization and maintenance of IPR or obtaining IPR in another country, or for capacity building. Further, 10% of the share will

be paid to the University as Administrative charges and 40% will be made available to the Department concerned for the purchase of equipment or material or for any academic activity and promotion of industrial partnership.

Commercialization of IPR

- The expenses involved in obtaining and maintaining the statutory rights as the University-owned property shall be met by the University. There would be a time frame in which the institute-owned property would be commercialized, which would be decided by the IPR group of the institute either on case to case basis or as a set pattern decided by the IPR Cell.
- Third parties must obtain express authorization writing from the University to commercialize/exploit the IP Confidentiality agreements will continue in force even if the commercialization process is aborted at any stage.
- The University IPR Cell will license the rights in the Institute owned intellectual property at its own discretion through third parties who may or may not be the creator of IPR through exclusive/ non-exclusive licenses or by assigning its own right to the third party safeguarding the financial and legal interest of the institute and the creators.
- The costs of transfer of interest /right/ ownership or exclusive marketing right of the Institute-owned intellectual property will be borne exclusively by the licensee, assignee, or person acquiring such rights. Further, the licensing or assignment by the institute may be subject to special terms and conditions wherein the licensee or the assignee will be subjected to sharing the revenue or the cost of maintenance of the intellectual property or both as decided and discussed mutually.
- In circumstances wherein the assignee or the licensee has not taken adequate steps for the commercialization of the University-owned intellectual property; the University would be free to revoke the license and assign it to another party.

Pertinent Issues Relating to IPR

Conflict of Interest

The inventor(s) are required to disclose any conflict of interest or potential conflict of interest. If the inventor(s) and/or their immediate family have a stake in a licensee or potential licensee company, then they are required to disclose the stake to the Chairperson/Coordinator of IPR Cell if they and/or their immediate family have in the company. A license or an assignment of rights of a patent to a company in which the inventors have a stake should be subject to the approval of the IPR Cell body taking into consideration this fact.

Dispute Resolution

IPR Cell will settle any dispute/conflict/grievance between the University and the researcher/inventor/collaborator/sponsors regarding ownership of IP, implementation of IP Policy and shall recommend the same to the V.C. of University or his/her nominee, whose decision shall be final.

Legal Jurisdiction

As a policy, all agreements signed by the University and disputes arising therein will be subjected to the legal jurisdiction of the Rajasthan High Court only.

Mandatory Obligation for Investors

All credits and benefits of collaborative work including the intellectual property generated during the tenancy would be shared between both parties i.e. University and collaborating agency as per mutually agreed MoU.

Copyright Issues w.r.t. Educational Resources

In matters of copyright, if any portion of their creation is not their original work then the creators must provide documentary proof that requisite permission has been obtained from the original creator (owner) or provide a statement that could give adequate reasons that permission is not required and is an adequate use of the information available. They will further certify that the work contains neither slanderous material nor material that invades the privacy of others.

Under circumstances wherein the third party alleges infringement of rights by the creator and the IPC finds a prima facie in this respect indicating that the creator has made false claims

the University shall immediately take steps to dissociate itself from the said intellectual property. Provisions would be made in writing with the creators to assure and prevent the University from any damages arising out of such litigations.

It is to be noted that while retention of the hard copy by the University library is essential for the meeting of requirements for a degree, and the student must agree to allow the abstract of the thesis to be made available electronically, the student will have the option to refuse the releasing of the full electronic text of his/her thesis on any network. On the University part, the library has to ensure that the use of the texts of theses held by it is consonant with laws governing copyright and fair use, as well as sound academic practice.