

UNIVERSITY FOR DEVELOPMENT STUDIES



INTELLECTUAL PROPERTY POLICY

DECEMBER, 2020

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Foreword

The vision of the University for Development Studies is “to be the home of world-class poor scholarship”. This is reflected in its motto “Knowledge for Service”, as well as its Problem-Based Learning methodology of teaching, research, community relations and outreach programmes.

This Policy is to safeguard the University’s innovations and to provide the impetus needed to promote scientific research and technological development.

Fairness and justice shall be the bedrock on which the implementation of this policy is anchored.

The common effort of all and sundry to make this policy document available is heartily acknowledged.

Prof Gabriel Ayum Teye

Vice-Chancellor

Preface

Being a crucial part of the knowledge factory for Ghana, the University's operations may lead to the development of marketable products and concepts that may require protection by law.

This Policy of the University applies, among other things, to all research, including self-sponsored and other sponsored projects conducted by or under the auspices of University for Development Studies (UDS), whether funded by an external sponsoring agency, UDS or another funding source leading to the development of new marketable products or concepts of proprietary nature.

The University's Intellectual Property Policy is intended to sensitise employees and students on Intellectual Property matters.

The efforts of the Committee and the Sub-Committee Members, and Boards that initiated, developed, and approved this Intellectual Property Policy are fondly and duly recognised.

Thank you.

Dr Edward S. Mahama

CHAIRMAN, UDS-IP Policy Development Committee

Definitions

In this policy, unless the context otherwise requires, the following terms, without limitation shall have the following meanings:

ARIPO: African Regional Intellectual Property Organization

Asset: Anything the University owns or is entitled to.

Assignment Agreement: An agreement between two parties in which one party agrees to assign and transfer rights, title, and interest in an Intellectual Property to another party.

Author(s)/Creator(s)/Inventor(s)/Originator(s): Any employee(s), student(s) or visitor(s) who invent(s), develop(s), design(s), breed(s), create(s), author(s), or express(es) an Intellectual Property (IP) that is protected under law.

Background IP: Any IP owned by an employee independently or prior to the commencement of research and which is used while performing the research.

Collaborator: Any individual or entity who signs a research with the University or any employee of the University

Collaboration: An agreement with an individual or entity and the University

Commissioned Work (“work-for-hire”): When someone has been hired to create a work.

Commercialisation: Any form of exploitation of IP, including assignment, licensing, internal exploitation within the University and commercialisation via a spin-off enterprise.

Confidential Disclosure Agreement: It is also known as a Confidentiality Agreement/Non-Disclosure Agreement/Proprietary Information Agreement. This is a legal contract governing the exchange of confidential or proprietary information as well as research findings by students/researchers between two or more parties for limited purposes whilst restricting access to such information by third parties.

Conflict of Commitment: An external activity that has the potential to reduce the attention, time and efforts devoted by an employee to his/her responsibilities at the University and may impact negatively on the performance of his/her assigned duties.

Conflict of Interest: An overlap between an individual's professional obligations and his/her private interests. Such conflicts may not be unethical and do not constitute or imply any wrongdoing, but they may lead to actual misconduct when considerations of personal gain, influence or compromise an individual's judgment and actions in the performance of his/her assigned duties.

Consultancy: Professional advice offered by an external expert in a discipline. An employee who offers his/her expertise, for clients outside the University, for which some financial return is provided.

Contract with the University: A written or recorded agreement relating to employment or engagement with the University enforced by law.

Creation/Invention: A new, useful, and non-obvious idea and/or their reduction to practise that results in, but is/are not limited to, new products, devices, processes, and/or methods of producing new and/or useful industrial operations and materials, any article useful in trade or any composition of matter that is industrially useful or that has commercial potential, new varieties of plants and breeds of animals, new designs in the production or manufacture of an article, databases, circuit designs, prototype devices, equipment and any improvement upon existing processes or systems. An invention/creation can be made solely or jointly with others as co-inventors.

Copyright: Type of Intellectual Property that gives its owner the exclusive rights to make copies of a creative work, usually for a limited time.

Copyrighted Works: Literary, scientific and art works, including academic publications, scholarly books, articles, lectures, musical compositions, plays, films, presentations and other materials or works other than software, which qualify for protection under the copyright law.

Disclosure: Any non-confidential information about an invention or an idea made available to the public. It includes abstracts, journal articles, conference papers, printed and online publications, publicly available abstracts of funded grant proposals, open thesis defences, presentations, poster sessions, exhibition, etc.

Employee: A person who has a *valid* contract (paid or unpaid) or a working relationship with the University. It includes professional, academic, administrative, visiting lecturers/researchers, assistantships (teaching/research assistants).

Equity: Fair share of benefits from Intellectual Property.

Geographical Indications: Indicators which identify a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of a good is essentially attributable to its geographical origin

Industrial Design: The original, ornamental and non-functional features of a product that result from design activity. The right concerns merely the appearance (the ‘design’) of a product, not the product itself.

Industrial Property: Inventions of all fields of human endeavour (e.g., patents, utility models, industrial designs, geographic indications, trade secrets, confidential information, trademarks, service marks, commercial names/designations, plant varieties, etc).

Innovation: Improvement on an existing products, concepts and processes.

Innovator: An individual who introduces a change and/or new idea(s) to an existing Intellectual Property.

Inventor: An individual who introduces a new idea(s) for which an Intellectual Property does not exist.

Intellectual Property (IP): It represents products of the mind/intellect or ideas that when converted to tangible forms can be protected by law or specified by the University from time to time.

Intellectual Property Committee (IPC): A committee charged to perform specific functions with respect to IP.

Intellectual Property Right(s): An exclusive right(s) granted to a person over the use of his/her creation for a specified period.

Invention: An idea of an inventor which permits in practice the solution to a specific problem in the field of technology. It may be, or may relate to, a product or a process.

Material Transfer Agreement (MTA): A contract regulating the transfer of tangible research materials between two or more organizations, when the recipient intends to use it for his/her own research purposes. The MTA describes the rights of the provider and the receiver pertaining to the materials and any derivatives.

Net Revenue: Gross revenue less expenses incurred in protecting or promoting or commercialising the innovation or invention.

Non-equity royalties/incomes: Monetary income or revenue from commercialisation.

Patent: An exclusive right granted to an inventor to exclude all others making, using, selling or offer for sale the invention within a territory for a specified period (e.g., 20 year in Ghana).

Proprietary Information: Sensitive non-public information that offers certain competitive advantage to an organisation. It includes formulas, trade secrets, software programmes, etc.

Significant Support from University: Include the use of University funds, personnel, facilities, equipment, materials, or technological information, and includes such support provided by other public or private organisations when it is arranged, administered, or controlled by the University.

Student: A part-time or full-time person enrolled in an undergraduate or post graduate programme at the University.

Spin-off: An independent division of the University established purposefully to commercialise new technology or concept.

Tangible Research Property: Tangible results from research activities including but not limited to, software, data, biological materials, drawings, diagrams, prototypes, etc.

Third-party: A person or group besides the two primarily involved in any form of contract with the University.

Trademarks: Any word, phrase, logo, name, symbol, device, sign or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and uses or applies to register, to identify and distinguish his goods from those of others which includes the container of the products or the packaging.

Trade Secrets: A trade secret is any device or confidential data, process and procedures (Third Trimester Field Practical Programme and Community-based Education and Service), information or compilations used in research, business, commerce and industry which is not generally known or accessible, and confer competitive advantage on one having the right to use it. The information has commercial value because it is secret or confidential. Trade secret protection requires the owner to take reasonable steps to protect the secret such as limiting access to the secret. Trade secret may last indefinitely but will be lost when the information becomes generally known. No filing or registration is required for trade secret protection.

University: Refers to the University for Development Studies or organisations governed by the University.

Visitor: A person who is neither a student nor an employee of the University who engages in work at the University. This includes researchers, visiting professors, adjunct professors, volunteers, interns, exchange students, etc.

WIPO: World Intellectual Property Organization

Section 1: Introduction

1.1 Background

The University's vision, "to be the home of world-class pro-poor scholarship" directs our pedagogy for teaching, research and community relations and outreach programmes. The University for Development Studies (UDS) or organisations governed by the University, herein referred to as the University, embarks on activities driven by fairness and justice among all University employees, students, contractors, visitors, and other third parties.

As an institution of higher education, our practice-oriented, community-based, problem-solving, as well as gender-sensitive and interactive research, teaching, learning activities will lead to the development of marketable concepts and products that may require protection by law. Hence the need for a policy to protect such propriety of the University.

1.2 Purpose

Thus, this policy of the University is intended to sensitise stakeholders on Intellectual Property (IP) matters and provide the needed security and the impetus to inspire the discovery of novel and marketable products and concepts. The policy ensures compliance with applicable national laws and regulations.

1.3 Objectives

The University's IP Policy seeks to:

- *Promote scientific research and technological development through the creation of an enabling environment.*
- *Encourage researchers to consider the opportunities for exploiting inventions to increase the flow of benefits to society.*
- *Ensure that various competing interests of the University are upheld.*
- *Safeguard IP assets of the University.*
- *Facilitate equitable returns to the author(s)/creator(s)/inventor(s)/originator(s)/innovator(s) and the University.*
- *Inspire, guide and seek innovation within the University community.*

| Industrial Property | Copyrights |
|--|---|
| <ul style="list-style-type: none"> ○ Patents (inventions) and Utility model (“minor inventions”) ○ Industrial design ○ Trade secrets ○ Trademarks or designations ○ Commercial names ○ Geographical indications (product or concept peculiar to a geographical area) | <ul style="list-style-type: none"> ○ Scholarly works ○ Literary works ○ Computer software/programmes ○ Artistic works ○ Artistic performance |

This policy pertains to two categories of IP(industrial property and copyrights):

Table 1: Categories of IP

Section 2: Policy Statements

This policy shall apply to employees, students and visitors of the University. The University shall ensure that employment contracts or other agreements establishing any type of engagement between the University and an individual or an entity includes the provision of placing the individual or an entity under this policy.

Any IP generated before one ceases to be in contractual agreement with the University remains with the University.

All IP disclosures shall be kept confidential by the University. UDS IPP Administrator shall be responsible for informing all third parties of the confidentiality of all information and/or documents that may be shared.

2.1 Use of the University's Name

All written or broadcast material containing the University's name (University for Development Studies) for advertising or marketing purposes shall be submitted to the Vice Chancellor for approval prior to use of such material. A statement on the use of the University's name shall be included in all appropriate contracts between an individual or any other entity and the University.

Section 3: Ownership of Intellectual Property

3.1 University-owned intellectual property

When the University identifies a potential IP, the UDS IPP Administrator shall notify the employee, student or visitor through his/her Head of Department/Unit and Dean/Director.

When the University decides to protect or develop reported intellectual property in collaboration with a third party (e.g., industry), then the originator should be given the opportunity to participate in any negotiations concerning ownership, protection or development of that reported intellectual property, but negotiations will be undertaken as need be.

The University is the owner of IP created by its employees in the course of their employment **under the following circumstances:**

- IP created with significant use of the University's resources.
- IP created from the University's Commissioned Work (excluding scholarly work).
- IP created from research funded by the Ghana Government or Representative. A non-exclusive royalty bearing licence to the IP shall be granted to the Government. The University may however take steps to commercialise the IP where it is found to be of commercial value.
- IP created from a collaboration between the University and another research institution or collaboration between an employee or student at the University and third-party. The University shall however grant the collaborator a non-exclusive royalty bearing licence to the IP.

The University may require a student to assign ownership of an IP to the University where in its opinion, the IP has potential commercial value. The University shall bear all costs associated with the protection and/or commercialisation of the said IP. The distribution of any royalty from commercialisation shall be subjected to the provisions in this policy.

3.2 Creator-/Innovator-/Inventor-owned intellectual property

Employees and students shall own the IP created by them if:

- Any IPs created by an employee that bears similarity to a specific research project by the University, requires disclosure of the differences to the University. Further, the applicant shall prove that the IP did not arise through the significant use of University resources.
- IP is not created under any such agreement with the sponsor of the research.
- IP did not emanate from a sponsored research or any other agreement that requires ownership to reside in a third party.
- IP did not emanate from commissioned work within the scope of his/her engagement with or as assigned by the University.

Employees may choose the Creator-owned IP option in conducting their research at the University. They are however obliged to show proof of ownership of such works and notify the University through the UDS IPP Administrator before use.

An IP created by an employee on sabbatical or study leave with pay shall require a negotiation by the University and the Institution for co-ownership.

Where the University decides not to further process a reported innovation or creation, then the originator is free, at his/her own cost, to protect or develop the reported IP in any manner he/she deems fit. However, the University shall compensate (promotion points or monetary) employee, student or visitors if the withdrawal from the IP application process curtails after at least 12 months.

3.3 Sponsored or collaborative research

- Ownership of an IP (including exempted scholarly work) created through funded research pursuant to a research or grant agreement, or which is subject to Confidentiality Disclosure Agreement, Material Transfer Agreement, or other legal obligations affecting ownership will be administered by the terms of the grant or agreement as approved by the University in the collaborative research document.
- Visitor shall disclose his/her background IP that is associated to the work to be undertaken during his/her visit to the University through the UDS IPP Administrator before commencement of the contract.

- During the contract period, a visitor shall disclose an IP created to the University through UDS IPP Administrator.

3.4 Copyrights

- An automatic non-exclusive, royalty-free, non-transferable and irrevocable licence would be granted to the University on all copyrightable works created by the University for its own academic purposes.
- Copyright on teaching materials, textbooks and publications created by an employee would be waived by the University to the employee, student or visitor.

3.5 Student work

- Copyright on theses, dissertations and other scholarly works shall be owned by the student subject to a royalty-free license to the University to reproduce and publish the work.
- An IP created by students during their study or research at the University will be owned by the student except in cases where:
 - The University has committed a significant amount of its resources (including grants or bursary) towards the research.
 - The student was commissioned to do the work.
- A student on a sponsored research is subjected to contractual obligations of the agreement from the externally funded project.

Section 4: Administration of the Policy

The Institute for Interdisciplinary Research and the Legal Department, hereafter, refer to as UDS IPP Administrator, shall be responsible for the operationalisation of this IP policy. UDS IPP Administrator shall annually report to the University Council through the Vice Chancellor.

Section 5: Legal consideration

The legal handling of IP of the University hinges on Ghana's legislations that regulate IP, mainly: Copyright Act, 2005, Act 690– “An Act to replace the Copyright Law, 1985 (P.N.D.C.L 110); and the Copyright Office in conformity with the Constitution and to provide for related matters. Trademarks Act, 2004, Act 664– “An Act to provide for the protection of trademarks and for related matters”. Patents Act, 2003, Act 657 – “An Act to provide for the protection of inventions and other related matters”.

5.1 Identification and disclosure of Intellectual Property

The first step in acquiring appropriate protection for an IP is the disclosure of IP to UDS IPP Administrator. Employees, students and visitors shall be required to submit a disclosure of any innovative scientific findings of potential economic value to the University before public disclosure. This is to ensure that their research findings and creations with market potential are not subjected to premature disclosure so as not to jeopardize their protection and commercialisation. This also implies that when an IP is applied for, employees, students and visitors must avoid public disclosure of the IP until the end of the evaluation period and filing of protection.

It should be noted however that an IP can be safely disclosed beyond the University under the terms of a Confidential Disclosure Agreement.

5.2 Breach of rules

Breach of the provisions of this Policy may call for measures in accordance with procedures of the University and the relevant provisions of law.

5.3 Disputes and appeals

A breach of the IP policy shall be considered as a misconduct under the University's existing statutes and dealt with as such by a disciplinary committee. When there are disputes and need for appeals, they shall be dealt with by the designated person or body of the University. A decision shall be taken within 14 days from the submission of the concern.

The University has a right to claim a share in any commercial benefit received or the right to recover any establishment costs or continuing costs already incurred by the University, because of any subsequent development of reported IP, unless that right is expressly waived by the Vice-Chancellor in writing after consultation with the IPC.

Section 6: Enforcement of Policy

This Policy shall come into force after it has been approved by the Council of the University.

Section 7: Commercial development and benefit sharing

7.1 Commercialisation of Intellectual Property

The University shall facilitate the use of research outcomes to enhance the development of innovations with commercial value for industry and public usage. As may be required, the University may allow the use of its IP in the public domain and not for the purpose of licensing and profit-making depending on the relevance the invention or service might serve.

UDS IPP Administrator in collaboration with the employee, student or visitor shall develop a mutually acceptable strategy that allows for the commercialisation of an invention or innovation. This strategy should address matters such as potential funding sources and target markets.

If any, losses that might arise during commercial development of an IP would be incurred by the University.

UDS IPP Administrator shall be responsible for the administration and commercial development of IP owned by the University or co-owned with an employee, student, visitor or a third-party. Commercial development will emerge either through licensing of the IP, an assignment of the IP or the establishment of a spin-off.

7.2 Benefit Sharing and Royalty Distribution

Income from the commercialisation of an IP or technology shall be maintained by the University until all direct and indirect costs related to the protection and/or commercialisation of the invention is reimbursed. Sharing of the net royalty or income generated will be disbursed (Table 2) within the first trimester of each academic year.

Table 2: Profit sharing of benefit from IP

| Entity | Percentage | |
|---------------------------------------|---|---|
| | Significant contribution from the University | Minimal contribution from the University |
| Employee(s), Student(s) or Visitor(s) | 60 | 80 |
| University | 10 | |
| UDS Endowment Fund | 15 | 15 |
| Inventor's Faculty/School | 5 | |
| Inventor's Department/Unit | 5 | |
| IP fund to UDS IPP Administrator | 5 | 5 |

For benefit sharing between the University and a third-party, it will depend on the agreement between the University and the third-party.

Section 8: Policy Implementation

Heads of Departments and Units, Deans, and Directors shall be responsible for ensuring that employees, students, and visitors within their units comply with provisions in this Policy and the guidelines developed by UDS IPP Administrator.

Section 9: Developing, Protecting and Disclosure of Intellectual Property

Employees, students, and visitors of the University have responsibility of disclosing IP findings to IIRaCS/designated unit and signing the Non-Disclosure Agreement form. Where appropriate, procedures (e.g., laboratory recordings, etc) shall be submitted with the Non-Disclosure Agreement form.

Section 10: Inventions and Proprietary Information Agreements

Employees, students and visitors who participate in either a sponsored research or a University-funded research or who use significant funds or facilities of the University must agree to the terms in the Invention and Proprietary Information Agreement and sign the agreement.

Section 11: Inventory and Monitoring

UDS IPP Administrator shall keep records, including accounting records of all the IP assets. It shall monitor the deadlines for the payment obligations related to the maintenance of protected IP.

UDS IPP Administrator shall develop a monitoring and evaluation framework to assess the operations of the IP policy yearly.

IPC shall meet annually and assess all monitoring and evaluation reports from the UDS IPP Administrator.

Section 12: Policy Review Amendment

This policy shall be reviewed after the first year of ratification by the Academic Board. Subsequently, reviews shall be done every five years as may be determined by the Academic Board.

References

1. ARIPO/WIPO, Guidelines on elaboration of intellectual property policy and strategy, 2017
2. Copyright Act, 2005, Act 690, Ghana, 2005
3. Intellectual Property Policy, Gazette Vol 56, No. 3, University of Cape Coast, 2018
4. Intellectual Property Policy, KNUST POLICY 0012, Kwame Nkrumah University for Science and Technology, 2018
5. Intellectual Property Policy, University of Ghana, 2017
6. Intellectual Property Policy, University of Health and Allied Sciences, Ghana, 2017
7. Jewel, C (Ed.) (2019). Intellectual property policies for universities. WIPO Magazine, 50
8. National Intellectual Property Policy and Strategy, Ghana, 2016.
9. Patents Act, 2003, Act 657, Ghana, 2003
10. Trademarks Act, 2004, Act 664, Ghana, 2004

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Appendix

INTELLECTUAL PROPERTY AGREEMENT

(We need legal team to revise this)

- a) During my employment by, appointment with, and/or affiliation with UDS, I may discover, invent, or create work products that may be copyrighted, trademarked, or patented.
- b) I understand and agree that because of my employment, appointment, and/or affiliation, UDS has a valid interest in all such matters whether they be writings, designs, productions, inventions, discoveries or developments, conceived and/or made by me during any period of UDS employment, appointment, and/or affiliation, as well as any related copyrights, trademarks or patent rights, actual or potential.
- c) As a term of my employment, appointment, and/or affiliation, I understand and agree that UDS shall own and hold any inventions, discoveries, or any other material that may be patented or trademarked in accordance with a determination made by UDS which shall take into account the relative contributions made by me and UDS, the extent to which UDS resources and facilities were used, and whether the inventions, discoveries, or any other material that may be patented or trademarked arose out of the field or discipline in which I was employed, appointed, or affiliated.
- d) In addition, as a term of any employment, appointment, and/or affiliation, I understand and agree that UDS may hold and own work products that may be copyrighted pursuant to the statutes of UDS.
- e) I agree to assign to UDS at its request any rights I may have in such work products that UDS owns as described above and actual or prospective patents, trademarks or copyrights on such work products.
- f) I also agree not to transfer any rights or disclose any information concerning any such work products or the work products of any other UDS employee to any person other than those permitted under the Intellectual Property Policy or by requirements of the laws of Ghana.
- g) By execution of this agreement, I understand that I am not waiving any rights to a percentage of payments received by UDS for such work products as set forth in the UDS Intellectual Property Policy.

Name: _____

Status: _____

Signature: _____

Date: _____