Intellectual Property Policy

The Innovation Agency

Quick guide to Intellectual Property

Intellectual property (IP) is a group of property rights in the intangible but often important results of human creativity and innovation. IP can be owned, bought and sold in a similar way to physical property and can be licensed to others to permit them to make use of it.

IP rights include:

> patents, which protect technical *inventions,*
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> design rights, which protect product *appearance,*
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> rights in trade-marks, which are the words, symbols, designs or other badges organisation use to identify themselves and their goods and services, and
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> copyright, which protects a wide range of different types of original work including written material, computer programs, photographs and graphic works, video and sound recordings and database content.

Confidential information can also be thought of as a form of IP and in suitable circumstances unauthorised use or disclosure of such information can give rise to a legal action for breach of confidence.

IP can be valuable as it gives its owner a basis for controlling the commercial exploitation of the relevant material. This may for example be used to ensure that authorship or ownership is correctly acknowledged, and that the owner is financially compensated for use made of the protected material.

Some IP rights exist automatically, without the need for any formality or registration. This applies to copyright and to certain design rights. Others, including patents, registered designs and registered trade-marks, are granted only after application to an official body (in the UK, usually the Intellectual Property Office). The right to obtain protection can be lost if such action is not taken at the appropriate time. In particular a valid patent cannot (save under certain highly exceptional circumstances) be obtained in the UK for an invention unless a suitable patent application is made while the invention remains confidential.

Ownership of patentable inventions, designs and copyright works derives through the creator (or creators) of the relevant material but under UK statute law the first owner may in suitable circumstances be that person's employer, and ownership may be transferred by contract and by virtue of work having been created in pursuance of a commission.

Intellectual Property at the Innovation Agency

The Innovation Agency is an organisation licensed by NHS England. It is hosted by an NHS Foundation Trust. Barring decisions to the contrary at a suitable level of management in any given instance, Intellectual Property including all confidential information, inventions, patents, designs, copyright and trade marks developed by the Innovation Agency or funded by them will remain the property of the Innovation Agency

It is sometimes the case that IP is owned jointly between The Innovation Agency and a partner organisation such as a University. The Innovation Agency is to be consulted before any third party agreement is entered into regarding exploitation or disposal of such rights.

Employees do not always recognise the value of their creations and may enter into third party agreements (to collaborate perhaps) that assign or license such rights without securing adequate compensation or other contractual terms. It is important that The Innovation Agency retains ownership of the IP it generates in all appropriate cases and whilst it may license its background IP or share in the ownership of IP generated through collaboration on the right terms, IP is something that is to be actively considered when entering into third party agreements.

A further key aspect for The Innovation Agency in this area is ensuring that its staff remain free to fulfil the organisation's primary goal of advancing innovation through dissemination. In order to facilitate this it is essential that the right to publish in a timely manner is retained where appropriate and that contributors from The Innovation Agency are correctly named on any joint publications.

Staff of The Innovation Agency are encouraged to systematically record valuable works believed to benefit from actual or potential IP rights, projects involving creation of IP and arrangements entered into relating to ownership of IP, making use of the following template where appropriate.

General template for recordal of IP

<u>Background</u>

State what the project is, who the partners are and what the plan of development is.

If this is a new phase to the project (i.e. new partners are being added), state what, if any, funding was awarded previously and any conditions associated with it.

For example*, 'Intellectual property for any existing aspects of this intervention, drawn upon for the current project, rests with Mr. Smith at the Innovation Agency and NIHR as the previous funding body. Existing IP is as follows: xxx'.*

<u>Intellectual Property</u>

State the approach to development and exploitation of any new intellectual property.

For example, *'Intellectual property for any new tools and additional approaches developed through the Innovation Agency funded project will rest with the project partners' (define in a table).*

State how the partners will agree to use the intellectual property generated.

For example, *'As no one site or individual will hold the intellectual property rights to any tools, materials or approaches developed through the Innovation Agency funded project, any ideas to exploit the intellectual property must be discussed with the all partners and a majority vote must be reached'.*

Authorship and publication

Documents relating to research often constitute private, confidential property and the interests of authors and other interested parties may be harmed by premature disclosure. As such, agreement should normally be sought from all partners to any external communication containing data relating to a project (posters, abstracts, presentations, journal publications etc). All relevant partners and associated organisations are normally to be acknowledged in such communications.

Authorship confers credit and has important academic, social, and financial implications; it also implies responsibility and accountability for published work. Acknowledging authorship does not communicate what contributions qualified an individual to be an author. It is suggested to adhere to the contributorship policy of The International Committee of Medical Journal Editors (ICMJE). For details refer to www.icmje.org, but briefly, authorship is to be determined based on four criteria:

Substantial contributions to the conception or design of the work; or the acquisition, analysis, or interpretation of data for the work; AND

Drafting the work or revising it critically for important intellectual content; AND

Final approval of the version to be published; AND

Agreement to be accountable for all aspects of the work in ensuring that questions related to the accuracy or integrity of any part of the work are appropriately investigated and resolved.

Disclosure of potential conflicts of interest by authors is also strongly encouraged, and the ICMJE policy in this respect is also recommended.