

Policy for the protection and management of intellectual property rights (IPR) and physical material at the Norwegian University of Science and Technology (NTNU)

Adopted by the University Board on 9 June 2010 (S-sak 36/10)

NTNU's statutory responsibilities are to research, teach, disseminate and contribute to innovation and value creation on the basis of the results of research and academic and artistic development work.

New knowledge is created in the interaction between students, staff and external partners. For the university, it is vital that this knowledge can be used in further research and teaching, while it can be used to the greatest extent possible in society and in the business sector at the same time.

The aim of NTNU's policy for the protection and management of intellectual property is to help to create a predictable framework for NTNU's employees, staff, and external partners. The policy is also intended to help ensure that the interests and needs of the university and its external partners are addressed in a consistent and balanced way.

1. The purpose of the IPR¹ policy

Main objectives:

The policy shall contribute:

- to fulfilling the university's statutory objectives, strengthening its role as a knowledge management enterprise, and safeguarding the academic freedom of staff and students.
- to creating predictability within and outside NTNU with regard to the university's management of IPR.
- to ensuring that the results of its activities are, to the greatest extent possible, disseminated and exploited effectively to benefit business and society both nationally and internationally.

Subsidiary goals:

The policy is also intended to help ensure that:

- the moral rights of NTNU's staff and students are protected and respected.
- NTNU has a reputation as an attractive place to work and study.
- NTNU has a reputation as a professional and predictable partner for players in the public and private sectors.
- NTNU and its employees receive credit for research results and educational materials created by staff at the university.
- the university's units and staff do not deliberately or negligently infringe the intellectual property rights of others.
- NTNU's ability to enter into binding collaboration regarding development and exchange of learning resources is strengthened.

¹ Intellectual property rights.

2. What the policy covers

The policy covers results generated at NTNU, which may be:

- patentable inventions,
- works of the intellect (including academic literature and computer programs) and
- databases.

General knowledge and competence that the individual employee or student possesses and that have not been expressed in writing are not governed by the policy.

The policy also covers physical material that has been obtained by NTNU for use in research, education or development, or that has been produced in whole or in part through the use of the university's resources.

The fact that the policy covers all forms of IPR does not imply that the university will assert a claim for full or partial takeover of ownership or copyright for all IPR; cf. Section 6 below.

3. Who is covered by the policy

The policy applies to staff, independent contractors, students, visiting scholars and visiting students at NTNU.

The Rector is responsible for ensuring that additional guidelines are prepared in consultation with the staff and students (Section c) through their organizations concerning IPR created by:

- a) staff in connection with external work, during leave of absence or sabbaticals,
- b) employees in adjunct ("II") positions and other part-time positions,
- c) students who work on assignments in collaboration with external parties, and
- d) visiting scholars and visiting students.

Information with special reference to IPR created by students and visiting students:

Unless otherwise agreed, students or visiting students themselves own the IPR that they create as part of their studies/study period at NTNU.

As a minimum, agreements that are entered into between NTNU and students or visiting students shall safeguard the university's right to use generated IPR for education and research purposes.

At students' request, NTNU may, through TTO², take over the rights to and contribute to commercial exploitation of the students' results. In connection with such voluntary transfer of

² TTO is an abbreviation for technology transfer office. NTNU's technology transfer office is named NTNU Technology Transfer as.

rights to commercial exploitation, the distribution of rights is governed by a separate agreement between the student(s) and NTNU through TTO.

In cases in which IPR is jointly generated by one or more students and employees (co-ownership), NTNU will in all circumstances have the right to take over the employees' holding in the co-ownership, in compliance with the legislation in effect at any time and with any agreements that have been entered into.

IPR that is created by students when they have the status of an employee, for example in a project position or as a research assistant, is treated as IPR created by staff.

4. Allocation of roles between the university and its commercialization unit (TTO)

TTO is to contribute NTNU's achievement of its strategic objectives for innovation, with emphasis on innovation and commercialization³. TTO will thus be a professional adviser and contributor in the further development of the university's IPR policy, and will contribute to its implementation.

TTO is also NTNU's support service for the commercialization of ideas and research results to which NTNU has ownership under Norwegian law or by agreement, and that NTNU has been granted specific authority to manage⁴. In a professional manner, TTO is to assess the commercial basis for all ideas (project and work results) and inventions of which TTO is notified.

If TTO does not itself find a commercial basis for starting a project or continuing a project on the basis of the employee's notification, the employee shall have the right to commercialize the result on his or her own initiative in accordance with the guidelines in effect at NTNU at any time, and in accordance with specific terms agreed between the parties. The agreement shall inter alia protect investments that have already been made in the development of the result on the part of the commercialization unit until the agreement date.

If notified inventions or other results are to be developed further, through verification or by other means, the further development is to be governed by contract between NTNU through the academic unit, TTO, and the external party/parties in question.

5. Notification requirement and allocation of net income

Notification requirement:

As a rule, the university is to be notified through TTO of all results and all physical material with the potential for commercial exploitation.

³ Cf. collaboration agreement between NTNU and TTO dated 10 October 2007, Section 4

⁴ Cf. collaboration agreement between NTNU and TTO dated 10 October 2007, Section 9.1

If the notification applies to a patentable invention, the academic employee(s) nevertheless have the right to publish ⁵ the invention provided that the rights of a third party do not impede this.

The notification requirement does not apply to traditional academic literature, musical works, works of art, and personal teaching materials; cf. Section 6 below.

Allocation of net income:

Net income in connection with commercialization shall be allocated between the originator of the idea, the department/academic environment, and NTNU as the manager of the institution's IPR, in accordance with the model that the University Board has stipulated at any time.⁶

6. Ownership and rights of use to IPR

General rule:

To take care of the university's social responsibility (cf. the purpose of the IPR policy), NTNU shall as a general rule own all IPR and physical material that have come into being at NTNU using the university's resources, unless otherwise indicated by the exemption provisions below or by law or agreement by which the university is bound.

In exceptional cases, in which NTNU does not own the rights to results developed with the university's resources, NTNU shall by agreement be secured the right to use and to develop these results in education and research.

Exceptions to and clarifications of the general rule on institutional ownership:

a) Traditional academic literature, musical works and works of art

NTNU recognizes and emphasizes the employees' right to create and disseminate their own intellectual work. The university will therefore generally not require rights to commercial exploitation of traditional academic literature, musical works and works of art to be transferred to the university. Traditional academic literature is regarded as comprising monographs, textbooks, scientific articles and doctoral dissertations. Entry into an agreement with a publisher is also regarded as commercial exploitation.

Agreements on full or partial transfer of rights to work of the intellect, including works as mentioned in the previous section, shall always protect the employee's moral rights (that is, the right to be named as author of the work/publication and the right to prevent the work from being altered or made available in a way or in a context that is prejudicial to the reputation or individuality of the author or the work).

⁵ Cf. the Act respecting the right to employees' inventions Section 6 third paragraph.

⁶ Cf. S-sak 41/03 and S-sak 17/11.

b) Teaching programmes and teaching materials

Teaching programmes or teaching materials that have a clearly personal character or that fall under the exception under letter a) above are owned by the employee(s).

c) Results created as commissions

Unless otherwise agreed for the individual project, the right of ownership of results that are created as commissions passes to the commissioning party.

Commissions are projects that NTNU undertakes in exchange for consideration (payment) from one or more external commissioning parties, with a claim for deliveries (with counter-performance) through entry into an agreement/a contract.

d) Results created by students

See Section 3.

7. Ownership and rights of use to physical material

Physical material that is a result of the university's investment is NTNU's property, as long as this neither violates nor will violate the rights of third parties. This includes material that is created or produced with the university's resources or has by other means been collected or has come into being in connection with activities at NTNU.

Physical material is regarded as any product (organic, inorganic and biological material), including substances, organisms and crops, as well as materials.

Staff at NTNU may transfer physical material owned by or at the disposal of the university to third parties on the following conditions:

- i) A special agreement ("Material Transfer Agreement – MTA") shall be entered into before transfer/dispatch.
- ii) Some of the material must be left at NTNU, that is, the source must normally not be depleted.
- iii) The recipient must not forward the material to others without the prior written consent of the head of the unit.
- iv) It shall only be possible to give away the material for research purposes, and not for commercial use. NTNU shall ensure that the material will be used in an ethical manner.

8. Openness, publication, and confidentiality

Through publication, NTNU will strive to ensure that society has free and open access to the university's results.

NTNU will protect and safeguard the statutory right of the academic staff to determine when and how an academic work is to be published. A short-term postponement of publication can be agreed on to enable protection of rights.⁷

NTNU will establish the basis to enable academic literature created by the university's staff and students, after prior clearance of rights and protection of results with potential for commercialization, to be made freely available via NTNU's electronic archive and other Open Access publication channels. Similarly, NTNU will facilitate open access to teaching materials.

NTNU recognizes and will respect the legitimate needs of third parties to ensure confidential treatment of confidential information that may be received by the university's staff, students, independent contractors, visiting scholars, or visiting students in connection with sponsored activity or activity funded on a commission basis. Such confidentiality obligations shall as a rule be comprehensively governed by agreement between NTNU and the third party.

9. Standard agreements and supplementary guidelines

The Rector is responsible for ensuring that NTNU at all times has its own up-to-date templates for agreements for the implementation of sponsored activity or activity funded on a commission basis.

The templates shall include provisions on IPR that are consistent with the principles laid down in this document.

10. Conflicts of interest and ethics

NTNU has a social responsibility and will not be able to enter into agreements with staff, students or third parties that conflict with the university's academic freedom and responsibility to make results from NTNU's activities available so that they can be widely applied in the community and industry; cf. the purpose of NTNU's IPR policy.

Both as a producer of new knowledge and as an administrative agency, NTNU is dependent on trust, in the general public, from the funding authorities, and from partners in business and society. Trust is built through the impartial conduct of NTNU's staff and independent contractors in all relationships in which they may be perceived as representing NTNU. Among other implications, this means that their own interests – personal, academic, and financial – are not given priority over the university's interests as an employer and principal.

NTNU's code of ethics, as well as other relevant information about research ethics, shall be readily available on NTNU's website, to raise awareness about the importance of ethical considerations among staff and students.

⁷ Cf. the Act relating to Universities and University Colleges (Act of 1 April 2005 no. 15) Section 1 – 5(6) and S-sak 55/09 concerning postponement of publication.

11. Definitions

The following definitions apply in this document:

Commission:	Project that NTNU undertakes in exchange for consideration (payment) from one or more external commissioning parties, with a claim for deliveries (with counter-performance) through entry into an agreement/a contract.
Employee:	A person who has entered into a contract of employment with NTNU.
Independent contractor:	Physical or legal person who by agreement performs work or provides service to NTNU on commercial terms, without being an employee or a visiting scholar.
IPR:	Intellectual Property Rights. All rights to technical solutions, methods, processes and procedures, regardless of whether or not these are or may be patented, as well as all copyrights and rights to trademarks, design, plant species, databases, integrated circuit layout designs, drawings, specifications, prototypes, trade secrets and the like.
Moral rights:	The right of the originator of an idea/an author to be named in the manner required by proper usage, as well as the author's right to object to the work being altered or made work available in a way or in a context that is prejudicial to his/her literary, academic or artistic reputation or individuality, or to the reputation or individuality of the work.
Net income:	The amount available for distribution after the deduction of expenses for commercialization, which have been incurred by NTNU through TTO with respect to one or more external parties, and which have been documented and recognized in the accounts.
Physical material:	Any product (organic, inorganic and biological material), including substances, organisms and produce, as well as materials.
Student:	A person who has paid semester tuition fees and who is registered as a student at NTNU.
Third party:	Physical or legal person who is not subject to the rights policy.
TTO:	Technology Transfer Office.
Visiting scholar:	A person who by agreement conducts research and/or teaching at NTNU, without being an employee or an independent contractor.
Visiting student:	A person who is registered as a student at a collaborating educational institution and who by agreement takes part in research and/or teaching at NTNU.