



UNIVERSITY of GUYANA

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Intellectual Property Rights Policy for the University of Guyana

Executive Summary

Drawing from a number of Intellectual Property Rights policies from different sources including universities, the committee has drafted a policy which covers the two classifications of Intellectual Property Rights recognized by the World Trade Organisation (WTO):

- Copyright, which protects artistic works, typically for a minimum period of 50 years after the death of the author, and
- Industrial Property which includes Inventions (designs and innovations) which are usually protected for 20 years.

Intellectual Property Rights may be held by persons or institutions and Intellectual Property Rights regulations bring the fruits of intellectual labour into a framework of trade and fair use, and establish the rights and benefits of creators and owners.

This policy establishes the regulations for the administration of Intellectual Property Rights at the University of Guyana by defining the conditions that determine ownership, distribution of income, and other conditions under which the policy will operate. This document also defines the conditions under which the Policy will be administered.

INTRODUCTION

Intellectual Property Law in Guyana

Intellectual Property law in Guyana is governed by the *Trade Marks Act, Cap 90:01*; the *Patents and Designs Act, Cap 90:03*; and *The Copyright (British Guiana) Order 1966* which received certain provisions of the *Copyright Act, 1956* (UK) into domestic law. The *Copyright Act, 1956* has since been repealed in the UK.

The Copyright (British Guiana) Order 1966 and Copyright Act, 1956 (UK)

Under the Copyright Act 1956 (UK), a person may apply for copyright in respect of their original literary, dramatic or musical work which is unpublished at the time when the work was made. The copyright will subsist for fifty years from the end of the year in which the author dies.

Where the work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service for the purpose of publication in that newspaper, magazine or periodical, the proprietor is entitled to the copyright in the work in so far as the copyright relates



to publication of the work in any newspaper, magazine or similar periodical. In all other respects the author shall be entitled to the copyright.

Where a person commissions the taking of a photograph, painting, drawing or portrait and pays for it or commits to pay for it, the person who so commissioned the work is entitled to the copyright therein.

Where a work is made by the author in the course of his employment under a contract of service with another person, that other person (rather than the author) shall be entitled to any copyright subsisting in the work.

However, parties may exclude the operation of the provisions of the Act by agreement between themselves. The provisions of the Act will have effect subject to any agreement between the parties.

The copyright is infringed, *inter alia*, by any person who knowingly and without the license of the owner of the copyright, imports, sells or lets for hire, or offers or exposes for sale or hire any article subject to copyright. It is a criminal offence under the Act to knowingly infringe copyright and the offender is liable to prescribed fines or imprisonment. The owner of the infringed copyright may also bring a civil suit and will be entitled to all available remedies including damages and injunction and detention of any infringing copies of his/her work. Notably, no action in respect of an infringement of copyright can be commenced after a period of six years from the date at which the right of action accrued.

There is no infringement where, *inter alia*, there was fair dealing with the work for the purposes of research or private study; reporting on current events; public recitation of a reasonable extract not for the purpose of broadcasting; criticism or review where accompanied by sufficient acknowledgment; or publication of a short passage therefrom in a collection intended for use in schools accompanied by sufficient acknowledgment. In the relation to the latter, it is not fair use where the extract is from a work intended for use in schools.

In relation to the use of copyright material for education, there is no copyright infringement by reason only that the work is reproduced or adapted in the course of instruction by teacher or pupil or the work is included as part of the questions to be answered in an examination.

The owner of the copyright is free to transmit the copyright to any other person. He is also free to limit the assignment however he/she desires such as by making it apply to only some aspects of the copyright or to some countries and not others, or by limiting the period in which the copyright subsists. An assignment of copyright will only have effect if it is in writing and signed by or behalf of the assignor.

Patents and Designs Act, Cap 90:03

Any person who claims to be the true and first inventor of an invention, whether alone or jointly, may make an application for a patent. The application must be in the prescribed form and can either be left or sent by post to the Registrar of Deeds who is also the Registrar of Patents, Designs and Trade Marks.

The application must be accompanied by either a provisional specification or complete specification of the invention. A provisional specification must describe the nature of the invention; whereas, the complete specification must go a step further and describe the manner in which the invention is to be performed. The Registrar may request that suitable drawings be included in the specification or, in relation to a chemical invention, that samples and specimens be furnished (unless receipt is undesirable). The Registrar will also ascertain that the invention does not resemble in whole or in part any other specification previously published.



Where the Registrar accepts the complete specification, she shall advertise her acceptance in the Gazette and thereupon, the application and specification along with any drawings, samples and specimens shall be open to public inspection. Where there is no opposition to the grant of patent or where any opposition has been resolved in favour of the applicant, the Registrar may grant the patent to the applicant(s) upon payment of the prescribed fee.

The validity or term of a patent is limited to sixteen years and the precise expiration date will be entered in the register. Time starts to run from the moment the Registrar accepts the submitted specification as a complete specification. A patentee may apply to the court for an extension of the term of the patent but must do so at least six months before the expiration of the patent, although the court has the discretion to allow such application at any time preceding the expiration of the patent.

A patentee may make a request in writing to amend his/her specification including any drawings. The request and nature of the proposed amendment will be advertised and the public will have one month therefrom to oppose the amendment. The Registrar shall hear and decide any case in which there is opposition. Where there is no notice of opposition, the Registrar shall determine whether and subject to what conditions (if any) the amendment ought to be allowed.

A patent may be revoked on one of seventeen grounds set out in section 29 of the Act, including that the patent was the subject of a valid prior grant; or that the applicant was not the true and first inventor; or that the complete specification does not sufficiently and clearly ascertain the monopoly claimed. A person may apply to the Registrar within twelve months of the sealing of the patent for the revocation of a patent on any of the grounds.

In relation to designs, the Act provides that any person claiming to be the proprietor of any new or original design not previously published in Guyana, may apply to the Registrar in the prescribed form and manner to have the design registered. A design when registered shall be treated as registered as of the date of the application for registration. The registered proprietor of the design shall have copyright of that design for five years from the date of registration. He/she may however apply to the Registrar before the expiration of the five-year period for an extension of five years and may, before the expiration of that second five year period, again apply for another five year extension.

Under the Act, decisions of the Registrar can be appealed to the Appeal Tribunal which shall consist of a High Court judge nominated by the Chief Justice.

Re University of Guyana IP Policy

In accordance with the UK *Copyright Act, 1956* the University of Guyana may enter into an agreement with any party in relation to how copyright is to be dealt with or apportioned. Such agreement would take precedence over the provisions of the Act and would exclude the operation of any contrary legal provisions. As it reads, the University's current draft IP Policy is in keeping with the tenor of the Act since it recognizes that where work is produced pursuant to or under a contract of employment, the employer or person who commissioned that work should have ownership of copyright in the work.



Intellectual Property Rights Policy for the University of Guyana

The University of Guyana hereinafter referred to as the “University” is dedicated to teaching and research, and by extension, the dissemination of this knowledge to the public. The University recognizes that research, scholarship and publication of scholarly works are an integral part of teaching, research and service. To this end, it encourages the publication of scholarly works and strives to ensure that those participating are justly rewarded for their efforts.

Inventions and other materials which may have potential for commercialization, or which qualify for patent or copyright protection, may be produced through the activities of University faculty, staff or students who have been aided wholly or in part through the use of the resources of the University. It is therefore recognized that intellectual property is created as a consequence of the environment provided by the University, and the contractual relationships between the University, its staff, students, organizations and other partners.

In developing the present policy, the University has been guided by Intellectual Property policies elsewhere and by statements provided by its stakeholders.

Policy Statement

It is the policy of the University that copyrights, patents, and all other intellectual property rights arising from aesthetic, scholarly, or other research developed through independent efforts, and not with the use of Exceptional University resources, or as part of directed institutional assignment, shall reside with the originator. Independent effort is defined as the product of any research or investigation which is determined and completed by the individual without assignment or supervision from the University.

The University has a right to ownership of any intellectual property in which it has an interest. This interest is established when the intellectual property results from a specific assignment or when the assignment is completed with the use of Exceptional university resources. Assignments completed with Usual University resources do not establish an interest in the intellectual property by the University. Unless otherwise agreed, the policy also applies to any intellectual property in which the University has an interest under contractual arrangements, grants, or other arrangements.

The University may choose to administer all other intellectual property for which there is no legal interest, if they are offered to the University, in accordance with this Intellectual Property Policy, or as otherwise agreed.

In keeping with the above, Intellectual Property, may become, in whole, or in part, the property of the University, and will be administered by the relevant body/bodies authorized to do so.

Objectives

To this end, the University establishes this Intellectual Property Policy. The objectives of this intellectual Property Policy are as follows:

- (i) To provide a reasonable and effective framework to deal with intellectual property issues, and at the same time to allow the constant advance of knowledge and invention.



- (ii) To provide the basis for the terms of agreement and other contracts relating to the development of intellectual property.
- (iii) To provide staff, students and persons with an array of incentives to create valuable intellectual property, and when they do so, to reward their innovations.
- (iv) To ensure that the rights of all parties are fairly determined and upheld in the interest of academic freedom with full regard to the role of the University or sponsoring entity.

Definitions

Intellectual property refers to patentable materials, any copyrightable subject matter or trade secret. It also includes works of art or inventions or creations.

University means the University of Guyana.

Students mean any full-time or part-time undergraduate or graduate student, registered at the University, regardless of whether they receive financial aid from the University or elsewhere.

Staff means any employee of the University whether they are full-time or part-time employees of the University. If a student is a part-time University employee, he/she is considered a staff with regard to intellectual property developed as a result of his employment, and as a student with regard to other intellectual property. Visitors, who also use exceptional resources of the University, are considered as staff with respect to intellectual property.

Creator means any person or persons who create/s intellectual property.

Exceptional University resources refers to resources such as facilities, funds, services, equipment, paid leave and Support Staff, which are provided by the University in excess of those normally used or available to staff.

Usual Resources refers to materials and other scholarly works created by one's initiative with resources that are commonly provided or made available by the University. These include the use of the Library, one's office, computer, secretariat and other support staff, among others.

Application

The policy applies to all copyrightable materials, inventions and other research. The University asserts that all copyrights, patents, inventions and other intellectual property right developed through independent effort, and not with the use of Exceptional University resources or as part of an institutional or University assignment, shall reside with the originator.

The University asserts its rights to any intellectual property in which it has an interest based on the following conditions:

- (i) The intellectual property was developed using Exceptional University resources.
- (ii) The intellectual property was developed as part of a specific assignment.



- (iii) The intellectual property is one in which the University has an interest under the terms of contracts, grants, or other agreements, unless otherwise agreed.

The University may be asked to administer any intellectual property in which it does not have a legal interest, under the terms of this policy or by other agreements.

Under the guidelines of this policy, intellectual property will become, in whole, or in part, the property of the University. It however excludes those intellectual properties for which there were separate contractual agreements between the University and the creator, or its personnel.

COPYRIGHT

The following conditions apply to university staff, students and members, and also to visitors, visiting scholars and others.

1. The first owners of copyrights will be the creators of work of scholarly or artistic nature in any form, including but not limited to written, printed, electronic, visual, plastic, digital or other form, whether published or unpublished, created with the use of usual university resources, except where a prior arrangement was made for the disposition of rights in the work.
2. The university asserts ownership of copyrights in cases where:
 - the work was specifically commissioned by the university
 - the creator was specifically assigned by the university to create the work
 - the work was created as part of a sponsored programme or other arrangement where the university claims ownership.
 - the work was created using exceptional university resources.
3. Staff members who hold copyrights will enjoy full benefits of such rights, and will be fully responsible for discharging any obligations under such rights. However:
 - any costs incurred to the university in the preparation of the work will be recoverable by the university
 - holders of copyright will allow the university the right to use the work within the university without the payment of royalty.
4. The ownership of rights in work produced by staff members under sponsorship, licenses and other such arrangements entered into by the university will be defined by the agreement undertaken between the university and the sponsor, licensor or other such partner. However, the university will not enter in agreements which will affect the copyright entitlements of any of its staff, students or members, unless with the written consent of such persons/bodies.
5. Prior to a work being undertaken under an arrangement in which the university claims ownership, the university may enter into agreements with the member(s) who will create the work, for:
 - the sharing of benefits which may accrue from the work, such as royalties from sale of the work



- the granting of a non-exclusive license or the assignment of rights, to the creator for the commercialization of the product, providing that this does not result in the work being used for purposes which are in direct competition with the university.

6. Where the university and a staff member claim joint ownership of a work, each will grant the other the right to use the work without payment of royalty.
7. Rights held by the university in property created by a staff member under any circumstance stated above will continue to be in force after the staff member leaves the employment of the university.

Students

8. Except where a prior arrangement was made for the disposition of rights in the work, students will retain rights in work they produce out of research or other scholarly activity under the supervision of a staff member, provided that such supervision is a normal requirement of the student's academic programme. However, the university shall be granted non-exclusive, royalty-free right to
 - use the work for academic purposes within the university, including the making of photocopies and other forms of reproduction
 - make single copies of theses for academic use by other universities
 - publish an abstract of any student thesis
 - hold and circulate the work as part of its library collection.
9. The university may assert ownership or rights in works produced by students where:
 - the use of university staff, facilities, equipment and other resources substantially exceeds that considered normal for tuition in the student's programme
 - the work was generated from the use of university resources
 - the work was generated with funding from the university
 - the work is produced using intellectual property already owned by the university
 - the work is produced in a context (e.g., special programmes) where the university claims ownership and rights.

Teamwork

10. In cases where persons form teams in order to produce scholarly or artistic work, or whether such teams include partnerships between students, or between students and staff or students and faculty, prior arrangements in writing will be made for the disposition of rights in the resulting work

Income

11. In cases where it claims ownership of copyrights, the university will enter into written agreement with the creator of the work for the distribution of income accruing from the work.
12. Where the copyright belongs to a member of the university but the work was produced with the use of university facilities exceeding those required for normal academic matters, the university will recover its costs
13. Where there is commercialization of the work produced by a team, the benefits should be shared in portions agreed upon in writing by prior arrangement.



INVENTIONS

The following conditions apply to university staff, students and members, and also to visitors, visiting scholars and others.

1. The university asserts ownership of inventions which are created by its members in the course of their normal duties.
2. The university further asserts its ownership of inventions which:
 - are created by its members who were specifically assigned to do so
 - are specifically commissioned by the university to do so
 - involve significant use of university resources
 - are created by its members who are pursuing courses and/or programmes which are funded by the university.
3. University members who make an invention in the course of private research or other activity outside of their normal university duties, without the use of university resources, will be the owners of the invention.

Teamwork

4. In cases where inventions are made by university members who formed teams in order to produce the invention, whether such teams include any combination of university members exclusively or include the university as a member of the team or include persons external to the university, prior arrangements in writing will be made for the disposition of rights in the resulting invention.
5. The ownership of inventions made in the context of a sponsorship or partnership or other arrangement which the university has with a third or other parties will be defined in the contract between the university and these other parties as the case may be, provided that such contracts will not impact negatively on the entitlements of the university staff, students or members who made the inventions.
6. Where the university enters into an agreement where it engages an institution or institutions to produce inventions, agreements for the disposition of rights in such inventions will be made in the agreement between the university and other institution/s.
7. Where an institution contracts the university to produce inventions, agreements for the disposition of rights in such inventions will be made in the said contract arrangement.

Disclosure

8. A member of the university who believes he or she has made an invention will bring this to the attention of the university with 30 days of the date of the suspected invention.
9. Upon receipt of the notice described in 7 above, the university will, within 30 days:
 - conduct an assessment of the invention
 - determine the ownership of the invention



- verify the identity of the inventor/s
 - verify the arrangements in place for the distribution of rights and benefits in cases where the invention resulted from team work, sponsorship or client arrangements.
10. In cases where the university is owner of the invention and it wishes to exercise such right, it will, within 90 days of receiving the disclosure of the invention;
- declare its intention to exercise such right
 - take the necessary steps for the legal protection of the invention - decide on the best means of exploiting the invention
11. In cases where it does not wish to exploit an invention in which it has right of ownership, the university still assign such ownership to the inventor/s. In turn, the inventor will assign to the university royalty-free use of the invention for academic purposes.

Income

1. In cases where it claims ownership of an invention, the university will enter into written agreement with the inventor for the distribution of income accruing from the exploitation of the invention.
2. Where there is commercialization of an invention produced by a team, the benefits should be shared in portions agreed upon in writing by prior arrangement.

ADMINISTRATIVE PROCEDURES

Administration of the Policy

The Principles of the policy as set forth in this document are the responsibility of an **Intellectual Property Rights Committee**, comprising of no less than eight (8) members.

The Intellectual Property Rights Committee will be chaired by the Deputy Vice-Chancellor, and will include the Registrar, the Bursar, the Head of the Business Arm of the University and four (4) members elected by Academic Board.

Additional *ad hoc* members can be asked to serve, if the need arises.

The Intellectual Property Rights Committee will act on behalf of the university to:

- oversee the exercise of, and compliance with, the terms set out in the University of Guyana Intellectual Rights Policy so as to ensure protection of intellectual property generated by the University of Guyana and its agents
- receive Disclosures of intellectual property, maintain a record of same, and register such Disclosures with the Deeds Registry
- ensure resolution of disputes involving intellectual property rights
- make proper arrangements to deal with matters such as the expiry, disposal, licensing, transfer, and other variations of the ownership of intellectual property rights
- amend the Policy from time to time as set out in this document
- all other activities, arrangements and procedures necessary for the maintenance and functioning of a healthy Intellectual Property Rights Policy for the University of Guyana.



Disclosure of Intellectual Property

University personnel, and all others to whom the policy applies, will promptly provide the **Intellectual Property Rights Committee** with the information describing their creative and scholarly works or inventions which may have commercial potential, and to which this policy applies. They should then be required to sign all forms necessary to protect their intellectual property.

Disclosures are not necessary for the following:

- a. Works of authorship, such as articles for publications or professional journals.
- b. Research materials for internal use not intended for commercial exploitation.
- c. Administrative documents.

Licensing of Rights

Where the university holds intellectual property rights, it may enter into licensing agreements with relevant parties to commercially develop the property.

Transfer of Rights

Members and agents of the University who are holders of rights, and who wish to transfer those rights, may do so by notifying the **Intellectual Property Rights Committee** in writing. Upon receipt of such requests, the Intellectual Property Rights Committee will proceed to make arrangements for the transfer of the rights in accordance with the laws of Guyana.

If the university chooses not to commercially develop rights that it holds, the rights may be either assigned to, or acquired by, the creator.

Creators and the University may also enter into agreements for the joint exploitation of intellectual property.

Resolution of Disputes

Disputes will be resolved, as far as it is possible, using an internal mechanism.

The aggrieved party will write to the Vice-Chancellor setting forth the grievances or issues to be resolved. The Vice chancellor will send the complaint to the Intellectual Property Rights Committee.

The Intellectual Property Rights Committee considers the complaint and make a resolution. The Intellectual Property Rights Committee may seek legal or other advice in their attempt to resolve the matter.

The Intellectual Property Rights Committee advises the aggrieved party of the proposed resolution.

The aggrieved party has sixty (60) days in which to convey acceptance or rejection of the resolution proposed by the Intellectual Property Rights Committee. If the resolution is accepted, the party and the Intellectual Property Rights Committee will settle the matter within thirty (30) days.

If the resolution is not accepted, the aggrieved party has sixty (60) days in which to advise the Vice – Chancellor of an appeal against the decision.

The Intellectual Property Rights Committee, having been advised by the Vice-Chancellor of the appeal against the proposed solution, will set up, within twenty-one (21) days, an **Adjudication Committee**. This committee comprises one (1) nominee from the aggrieved party, one (1) nominee by the Intellectual Property Rights Committee who is not a member of the Committee, and one (1) nominee agreed by both



the aggrieved party and the Intellectual Property Rights Committee. The **Adjudication Committee** will complete its work and submit its decision within thirty (30) days.

Amendments to the Policy

This policy is subject to review by the Intellectual Property Rights Committee as necessary, but at least once every three (3) years.

Amendments to the policy may be proposed by the faculty body or University Administration. Proposed amendments will be submitted to the Intellectual Property Rights Committee for its consideration.

Amendments will be subject to final approval by the Academic Board.

The Effective Date of Policy

The policy will become effective from the time of its approval by the University. As soon as it is put into effect, it will become part of the University's by-laws and will be binding on all faculty, administration and other staff, and on graduate and undergraduate students when admitted.

The policy will also remain binding on persons whose services were terminated, or who have resigned, once the intellectual property was created during the tenure of their employment.

**APPENDIX 1****CONFIDENTIAL****INTELLECTUAL PROPERTY DISCLOSURE**

NAME:	
ADDRESS:	
DESIGNATION:	
FACULTY/DEPARTMENT:	
E- MAIL:	
TELEPHONE:	

NAME OF THE WORK:
DESCRIPTION OF WORK: Brief description of work – describe the work, and its special design features. For inventions, products, trademarks, designs, please provide drawings
PURPOSE OF THE WORK:
DESCRIBE THE FEATURE/S WHICH MAKE YOUR WORK DIFFERENT FROMSIMILAR WORKS:

University Resources Used
(1) University Staff involved



(2) Non-human University resources used

Collaborators
(1) University personnel
(2) Personnel from outside the University

Have you conducted a patent search?
If yes, what are the results?

Creator:

Signature: _____

Date: _____

Chair, Intellectual Property Rights Committee:

Signature: _____

Date: _____

