



BANARAS HINDU UNIVERSITY

VARANASI

ORDINANCES GOVERNING INTELLECTUAL PROPERTY POLICY

PARTS

- I. PREAMBLE
- II. COMMENCEMENT OF THE POLICY
- III. DEFINITIONS
- IV. SCOPE OF THE ORDINANCES
- V. OWNERSHIP OF INTELLECTUAL PROPERTY
- VI. CREATION OF INTELLECTUAL PROPERTY
- VII. RESPONSIBILITIES OF THE UNIVERSITY
- VIII. RESPONSIBILITY OF THE CREATOR OF INTELLECTUAL PROPERTY
- IX. INTELLECTUAL PROPERTY CELL (IPC)
- X. TECHNOLOGY TRANSFER ACTIVITIES
- XI. SHARE OF THE UNIVERSITY, INVENTOR/CREATOR AND ASSISTANTS
- XII. DIPUTE RESOLUTION
- XIII. MISCELLANEOUS SCHEDULE



I. PREAMBLE

1. The **Banaras Hindu University** (*hereinafter referred to as 'University'*) is dedicated to teaching, research, and the extension of knowledge to the public. The University recognizes its responsibility to produce and disseminate knowledge. Inherent in this responsibility is the need to encourage creativity and scholarly works and the developments of new and useful materials, devices, processes and other intellectual property. The creation of this intellectual property may have potential for commercialization, which thereby contributes to the professional development of the individual involved, enhances the reputation of the University, provides expanded educational opportunities for students and promotes public welfare. It is in the context of advancing the common good that University supports and encourage efforts directed towards bringing the fruits of University research in diverse fields of knowledge to public use and benefit.

The University is committed to providing an environment where scholarship and innovation can flourish and those participating can be justly rewarded for their efforts. At the same time it recognizes that certain intellectual property is developed as a result of the environment provided by the University and that special relationships exist between the University and its staff and students the University itself wishes where appropriate to gain benefit from the activity, with the benefits following on to future generations of staff and students.

The University recognizes that the research and teaching missions of the University always take precedence. At the same time, the University encourages the development of inventions and technology resulting from University research, and seeks to facilitate the transfer of such technology for the use and benefit of the public, the University and the Creator.

In order to establish the respective rights and obligations of the University, its faculty, students, and other employees in intellectual Property of all kinds now and hereafter existing, the University is adopting these **Ordinances governing Intellectual Property Policy** (*hereinafter referred to as the "Policy"*).

These Ordinances shall govern the Intellectual Property Rights of the University, faculty members, students and others in the



work, product, ideas and inventions created in connection with the activities of the University.

The University has created this Intellectual Property Policy for the management of intellectual property to:

- a. Promote, preserve, encourage and aid scientific investigation and research;
- b. Provide an organizational structure and procedures through which inventions and discoveries made in the course of University research may be made readily available to the public through channels of commerce;
- c. Establish standards for determining the rights and obligations of the University, creators of intellectual property (e.g., inventors, developers, authors) and their sponsors with respect to inventions, discoveries and works created at the University;
- d. Encourage, assist and provide mutually beneficial rewards to the University and members of the University and others who transfer University intellectual property to the public through commercial channels under this Policy;
- e. Ensure compliance with applicable laws and regulations and enable the University to secure sponsored research funding at all levels of research; and
- f. Enhance the reputation of the University as an academic research institution and a member of society by pursuing the highest ideals of scholarship and teaching and by conferring the benefits of that scholarship and teaching on the University community and society.

The University Intellectual Property Policy provides the structure for preservation and use of intellectual property and procedures through which inventions and discoveries made in the course of University research are made available to the public through the transfer of technology. The variety of intellectual property and the mechanisms for the transfer of technology are vast, and it is not possible to address all of the possibilities in this Policy. The goal of the University is intellectual property for society's use and benefit while generating income to support research and education.

The University shall require as a condition of employment that all University faculty and staff agree in writing to recognize and adhere to this Policy. Students and others working on research projects at the University requiring University assistance or utilization of University facilities will be required to agree in writing to recognize and adhere to this policy.



II. COMMENCEMENT OF THE ORDINANCES

2. These Ordinances shall come into effect from the date approval granted by the Visitor to these Ordinances.

III. DEFINITIONS

3. In these Statutes;

- | | | |
|-------|---|--|
| (i) | Assignment | Means the transfer of rights or title in the Intellectual Property in writing. |
| (ii) | Banaras Hindu University or the University | Shall refer to Banaras Hindu University established under the Banaras Hindu University Act of 1915 and to any other entity associated with it. |
| (iii) | Copyrightable Materials | Copyright and Copyrightable materials are as defined in the Indian Copyright Act. These shall include the following in original: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video and audio tapes or cassettes; (5) live video and audio broadcasts; (6) programmed instructional materials; (7) research notes, research data reports, and research notebooks; and (8) other materials or works other than software which qualify for protection under the Indian Copyright Act, 1957. |
| (iv) | Creator(s) | mean the faculty, staff, and other persons employed by the University whether full or part-time; visiting faculty and researchers; and any other persons, including students, who create intellectual property using University resources. |



- (v) **Confidential Disclosure** means an agreement between disclosing and recipient parties, or a term in a Research Contract or License Agreement.
- (vi) **Direct expenses** are the costs associated with the development, protection, maintenance and licensing of intellectual property. Such costs do not include the regular payment of salaries or other overhead costs of the University.
- (vii) **Educational Materials** means the content and associated tools and technologies for delivery of content, including materials developed for traditional “face to face” classroom courses, as well as other delivery methods such as Internet web-base delivery or other distance learning media. For the purposes of this Policy, Educational Materials do not normally include works such as textbooks, articles, papers, scholarly monographs, or artistic works produced in the normal course of academic scholarship.
- (ix) **Invention Disclosure** means a written description of an invention that is confidentially made by the inventor to the University.
- (x) **Intellectual Property** Intellectual Property shall include Patents, Trademarks, Copyrights, Trade Secrets and other species such as computer software or printed material, any new and useful process, machine, composition of matter, life form, article of manufacture, software, copyrighted work, such things as new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, software, musical processes, or unique and innovative uses of existing inventions. For the purposes of these Ordinances Intellectual Property may or may not be patentable or copyrightable.
- (xi) **Know-how** means the knowledge, innovations,



- practices, expertise, processes or procedures, and secrets of individuals regarding the use of a material, product or resource, or the practice of a method, for a particular purpose.
- (xii) **Project A/c Book** means the A/c Book in Annexure to these Ordinances.
- (xiii) **Publication** means a public enabling disclosure of an Invention, and may be verbal or printed. Printed publications include abstracts, student theses and, in certain instances, grant proposals.
- (xiv) **Patent and Patentable material** Patent and Patentable materials are as defined in Indian Patent Act. These include discoveries and inventions of new products and process.
- (xv) **Substantial use of University facilities or resources** means the regular utilization of University facilities, equipment, personnel or other resources owned by the University.
- (xvi) **University Research** means any research or development activity which is undertaken by the University, or which is related to duties and responsibilities for which a person is compensated by the University, or which is conducted with substantial use of University facilities, or resources.
- (xvii) **University Resources** means all tangible resources provided by University to Creators, including office, lab, studio space and equipment; computer hardware, software, support; secretarial service; research, teaching, and lab assistants; supplies; utilities; funding for research and teaching activities, travel; and other funding or reimbursement. "University resources" do not include payment of regular salary, insurance, or retirement plan contributions paid to, or for the benefit of, Creators.



IV. SCOPE OF THE ORDINANCES

4. These Ordinances governing Intellectual Property Policy apply to faculty, staff, graduate students, post-doctoral fellows, and non-employees (including visiting faculty, affiliate and adjunct faculty, industrial personnel, fellows, etc.) who participate in research projects in the University.

V. OWNERSHIP OF INTELLECTUAL PROPERTY

5. **General Statement of Ownership.** Subject to the exceptions mentioned hereinafter, all intellectual property (including lab notebooks and other tangible intellectual property) created as a result of University research or created by substantial use of University facilities or resources shall be owned by the University and the Creator of intellectual property jointly and where there has been external Corporate, Foundation, Trust or Industrial funding it shall be owned by the University, Creator of intellectual property and Corporate funding agency, if any, jointly provided such corporate funding agency has provided Rs.10 lakhs or more for a particular research/invention/intellectual creation under a specific agreement with the University. Intellectual property rights of which the University is the co-owner shall be managed by the Intellectual Property Cell as defined hereinafter.
6. **Exceptions to the General Statement of Ownership.** The Creator at his option may retain ownership of the following:
 - (i) All intellectual property developed without substantial use of University resources.
 - (ii) All rights in artistic, literary and scholarly intellectual property, such as scholarly books, articles, and other publications (including those in electronic form). Works of art, literature and music recordings are owned by their creators despite the use of University resources so long as such works are not the products of University research, neither created under the direction and control of the University, nor developed in the performance of a sponsored research or other third party agreement; and
 - (iii) All copyright in papers, theses and dissertations written as a student to earn credit in University courses or otherwise to satisfy University degree requirements.
7. **Other Ownership Options.** Upon mutual agreement, a creator may assign intellectual property he or she would otherwise own



to the University to be managed by the Intellectual Property Cell. If the University cannot, or decides not to, proceed in a timely manner to protect and/or license University-owned intellectual property, it shall assign ownership to the creator upon request to the extent permitted by these Ordinances and third party agreements, if any.

8. **Publication.** The University faculty and students may freely publish results of their research provided such research does not lead to copyrightable/patentable intellectual property.

VI. CREATION OF INTELLECTUAL PROPERTY

Intellectual Property consisting of Patentable or Copyrightable material can be created in the University in the following three ways:

- (a) University undertaking an assignment either from an external agency or by its own decision to take up creation of a specific Copyrightable or Patentable material and assign a team of its researchers to accomplish it.
- (b) Individual researchers or a team of researchers may develop copyrightable or patentable material during the course of their research or as a specific Project.
- (c) An external funding agency, be it a Foundation, Trust, Industry, Commercial undertaking or a company may enter into a specific agreement with the University and research/team of researchers to develop some specific Copyrightable or Patentable material.

VII. RESPONSIBILITIES OF THE UNIVERSITY

9. The University Administration shall:
 - (a) At its discretion assign management including patenting/copyrighting, negotiating and assigning or licensing commercial use of such intellectual property in which it has stake/share to the specified agency created for this purpose by CSIR and called ----- under such terms as university may consider reasonable or university may manage such intellectual property through IPC. Provided however that if the specialist CSIR agency or IPC, as the case may be, fails to serve patent/copyright within one year of Patentable/Copyrightable material being made available by the inventor/creator or fails to assign/license patented/copyrighted material to economic use, during further period of one year, the inventor/creator will have the right to withdraw right of management of patentable/copyrightable or patented/



copyrighted material to himself and take further action to manage it himself and thereupon the right of the specialist agency/IPC to manage it will stand terminated.

- (b) Educate faculty members, staff and others regarding University's intellectual property. Provide support as it deems necessary or desirable to obtain legal protection of intellectual property in which University has stake/share. Facilitate the transfer of such intellectual property for economic use and develop mechanisms within these statutes for the assignment and management of Intellectual Property;
- (c) Provide legal support as it deems necessary and desirable to defend and protect the interests of the University and the creators of the intellectual property against third party claims or unauthorized use; Share royalties, equity or other income derived from intellectual property in which University as stake/share;
- (d) Report to research sponsors as required by research and Licensing agreements, and applicable laws and regulations in a timely manner.
- (e) Provide oversight of Intellectual Property management and technology transfer to ensure adherence to these Ordinances.
- (f) Take appropriate actions to protect the Intellectual Property in which university has stake/share. The University acknowledges the importance of transferring its Intellectual Property in an appropriate, timely and cost-effective manner. To that end, the University shall establish efficient mechanisms for assignment of Intellectual Property, so as to maximize the value of the intellectual property for the creator/ funding agency if any and/or the University.

VIII. RESPONSIBILITIES OF THE CREATORS OF INTELLECTUAL PROPERTY

- 10. The creator of the intellectual property shall
 - (a) make an invention disclosure in a thorough and timely manner of all inventions, discoveries and other works that are patentable/copyrightable and in which University has stake/share as described in these Ordinances.



- (b) provide such assistance as may be necessary throughout the assignment process to protect and effectuate transfer of the intellectual property;
- (c) arrange for the retention of all records and documents that are necessary to the protection of the intellectual property;
- (d) abide by all commitments made in license, sponsored research and other agreements made in accordance with these Ordinances.
- (e) have the further responsibility to properly consider, disclose and manage any possible conflicts of interest arising from agreements to commercialize intellectual property. If multiple agreements exist, for example, when a company funds University research and also has a consulting arrangement with the creator, there may be conflicts created with respect to intellectual property rights. The creator should work with the IPC to resolve such conflicts.
- (f) to manage, including bearing patent/copyright, assigning it for economic use or licensing it similarly on terms to be finalized jointly by head of IPC, inventor/creator and financing agency if any for the research project which lead to such an invention/creation, in situation referred to in 9(a) when inventor/creator has withdrawn the right of management of intellectual property from the specialist agency of CSIR/IPC due to their non-performance. Provided that income from any such assignment/licensing for economic use will necessarily be receivable by the University in totality and distribution of inventor's/creator's and financing agency's share will be the exclusive responsibility of the University.

IX. INTELLECTUAL PROPERTY CELL (IPC)

- 11.(1) There shall be an Intellectual Property Cell (IPC) for the management of the intellectual property in which the university has stake/share, technology transfer activities and for the implementation of the I.P. Policy. Particular attention shall be paid by the IPC to the preservation of intellectual property, management, budget, division of intellectual property income and the resolution of disputes. The IPC shall make recommendations to the Vice-Chancellor. The IPC shall consist of the following:



- (a) There shall be a Professor In-charge appointed by the Vice-Chancellor, who shall be the head of IPC.
- (b) One Intellectual Property Attorney having experience in the field of intellectual property laws to be engaged by the University.
- (c) Directors of IT, IMS and IAS
- (d) The Dean, Faculty of Law
- (e) Upto three other Professors to be nominated by the Vice-Chancellor.

Five shall constitute to quorum.

12. The meeting of the IPC shall be convened by the Chairman from time to time. The term of the committee shall be five years. The IPC shall lay down its own procedure for conduct of its business.
13. The University shall provide adequate support and secretarial staff headed by a Deputy Registrar for smooth functioning of the cell.

The responsibilities or the functions of the IPC shall include amongst other following:

- (a) to assign management, utilization, licensing and protection of intellectual property in which university has a stake/share, to the expert agency created by the CSIR for this purpose or to publish or advertise the intellectual property as it deems appropriate.
- (b) endeavor to negotiate and manage agreements to the best advantage of the creator and the University as are consistent with the Intellectual Property Policy and guidelines;
- (c) provide all legal support as deemed necessary or desirable for the protection of University's intellectual property;
- (d) prepare legal instruments necessary to realize the technology transfer objective.
- (e) provide legal and administrative support following such realization as needed; and
- (f) management of conflicts of interest, including negotiating agreements which are consistent with the Act and the Statutes.



X. TECHNOLOGY TRANSFER ACTIVITIES

14. **Assignments, disclosure & confidentiality.**

The creator shall make a confidential disclosure to the IPC in writing as soon as possible if the University has an ownership interest and if the intellectual property/technology may be patentable, copyrightable or has potential for commercialization and licensing. The IPC will provide disclosure forms on request. The creator may consult IPC with respect to his duties to disclose inventions and the manner and timeliness with which such disclosures should be made to the IPC.

The disclosure should contain sufficient detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation and technical characteristics of the creation. The creator(s) should also be responsible to update the IPC in a timely manner of any developments involving publications, sale or use of which he becomes aware after the confidential disclosure.

15. **Determination of Intellectual Property for Protection and Commercial Development.**

- (1) If the creator claims an ownership interest in intellectual property or has a question about whether an assignment must be made to the University, the intellectual property shall be disclosed to the IPC and the claim or question clearly stated. The University, through the IPC, will provide a determination of rights within a reasonable time following submission, generally not to exceed 90 days. The determination may be appealed to the Vice-Chancellor for a final adjudication.
- (2) The IPC will evaluate inventions and other intellectual property disclosed to the IPC to suggest the form of intellectual property protection, if any, that should be considered and also the potential for commercial exploitation. Thereupon it shall either assign the task of securing patent/copyright in the intellectual property and of managing its subsequent economic use to the specialist agency of CSIR or do so itself in a timely and efficient manner. Direct expenses associated with obtaining protection for intellectual property in which University has stake/share shall be borne by the University if such intellectual property is being managed by the IPC, by the specialist agency of CSIR if University has entrusted management of a particular intellectual property to it and by the creator/inventor if he has withdrawn



management of intellectual property from specialist agency of CSIR/IPC on grounds of non-performance.

16. **Agreement among the University, Creators and Companies, for financial research leading to invention/discovery and its economic use:**

When a researcher in the University does research leading to invention/discovery/creation or when a public funding agency funds such research in the University there is no need for an agreement to be drafted and executed. However when an Industry, Company, Foundation or Trust provides full funding beyond the available resources and equipment in the University, an agreement between the University, Principal Researcher and authorized representative of the Funding Agency (Company, Industry, Trust or Foundation) must be executed in each case before such sponsored research is taken up. Such agreement must provide for:

- (a) management of intellectual property as provided for in this Ordinance.
- (b) that the funding agency shall have right of first and exclusive use of intellectual property created through such sponsored research and for share of the University and researcher in income to be derived from economic use of such intellectual property to be determined on revenue sharing basis of which the details will be specified in the agreement.

Provided that the funding agency may agree to license use of such intellectual property in the beginning itself or subsequently at any stage, to other commercial/ industrial bodies on terms to be decided jointly by the signing parties at the time of such agreement in each case.

- (c) share of the University and of inventor/creator in income from funding agency or share of funding agency, University and inventor/creator in income from any other third party shall be receivable in all cases by the University only. It shall be upto the University to determine and distribute the share of inventor/creator subsequently in the first case and of funding agency and inventor/creator in the latter case.



17. **Indemnification.** The commercial entity funding the research will normally be required to indemnify the University with respect to general liability, product liability and/or infringement claims related to licensed intellectual property to be used in any product as a result of an agreement under these Ordinances.

XI. SHARE OF UNIVERSITY, INVENTOR/CREATOR AND ASSISTANTS

18. The net earnings from the commercialization of IP owned by the University would be shared as per the schedule to these Ordinances.

XII. DISPUTE RESOLUTION

19. Subject to clause 14 of these Ordinances any disputed issue related to the intellectual property or the interpretation of these Ordinances, shall be decided as follows:

Any disputed issue that cannot be resolved with the assistance of the IPC shall be referred to a tribunal of Arbitration at the instance of the University or at the request of the inventor or funding agency. The decision of this tribunal of Arbitration shall be final between the parties for any disputed issue related to intellectual property, revenue sharing or the interpretation of this policy.

20. The tribunal shall consist of one member appointed by the Vice-Chancellor, one member nominated by the other party(s) and the Dean Faculty of Law as Umpire.
21. The process of resolving the dispute shall be completed expeditiously and except in unusual circumstances within two months.
22. The tribunal of Arbitration shall have power to regulate its own procedure in consonance with principles of natural justice.

XIII. MISCELLANEOUS

23. **Amendments:** The University reserves the right to amend these Ordinances at any time as required. The Executive Council upon recommendation by the Intellectual Property Cell may amend these Ordinances.



24. **Waivers:** The University may grant a waiver from the provisions of these Ordinances on a case-by-case basis. All waivers must be in writing, supported by reasons and signed by the Vice-Chancellor. Any decision to grant a waiver will take into account the best interest of the University and the facts of the particular situation. Every waiver and reasons for it shall be reported to the Executive Council in its next meeting.
25. **Educational Materials:** Educational Materials represent a broad spectrum of copyrighted works. These materials encompass traditional educational materials such as material for lessons and course material as well as other methods of course delivery such as Internet based learning. The desire of the University is to encourage the development of creative and effective educational tools and media in order to further the University educational goals. Educational materials produced in the normal course will generally be owned by the creator of the educational material. Certain circumstances, may however, give rise to claim of joint ownership by the University. Because all possible circumstances cannot be envisioned by these Ordinance, each particular situation will have to be evaluated on its own facts to determine ownership interests.
26. **Moral Rights:** The University recognizes the moral rights of the creators of intellectual property and shall endeavor to protect these rights. These include the right of fair attribution of authorship or invention, the need for the work not to be altered in such a way that it harms the reputation of the creator and an opportunity for the creator to be involved in determining the final outcome of his/her labour.
27. **Logo and the Emblem of University:** The Logo and Emblem of the University are the exclusive identity and property of the University and no person shall without prior permission of the University can utilize the logo and/or emblem of the University for any commercial purpose.



SCHEDULE – 1

- A. The Revenue generated from the Intellectual Property shall be distributed as follows:
1. When University is the Creator, the income from economic use of intellectual property will be shared amongst the University, Research Team members and Support Staff as 60%, 35% and 5% respectively.
 2. When the Individual researcher or a team of researchers is the Creator and has used substantial University resources, the Revenue shall be shared amongst the individual researcher/, team of researchers, the University and Support Staff as 60%, 35% and 5% respectively.
 3. When the creation is the result of funded research, the income from economic use to be received from the Institution funding the research will be on revenue sharing basis at the level determined in the agreement assigning economic use of intellectual property to that Institution when it is the economic user. In such cases the income shall be shared between the team of researchers, the University and support staff as 60%, 35% and 5% respectively.
 4. When a Company, Industry or Commercial Undertaking other than Funding Institution is the economic user the income receivable from the economic user will be as provided in the licensing agreement with that Company, Industry or Commercial Undertaking. Such income will be shared as 60%, 40% between the Funding Agency and the University. The University will distribute the income it so derives to itself, researcher/team of researchers and support staff as in the preceding para.
 5. the shares as mentioned above shall be determined after deducting the direct expenses if any from the total income received by the University.
 6. The creator(s) share would be declared annually and disbursement will be made to the creator(s) or their legal heir, whether or not the creators are associated with the University at the time disbursement.
 7. Co-creators that is research team members of IP shall sign at the time of disclosure a Distribution of IP earnings agreement, which shall specify the percentage distribution of earnings from IP to each co-inventor. The co-owners of intellectual property may at any time by mutual consent revise the distribution of IP Earnings.