

# INTELLECTUAL PROPERTY REGULATIONS

at

University of Minho (PT)

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## INTELLECTUAL PROPERTY REGULATIONS

### PREAMBLE

Intellectual property refers broadly to the results from the activity of the human mind. It protects the inherent rights to those creations and comprises two distinct legal principles: industrial property and copyright.

Industrial property protects the rights of incorporeal goods in the domain of economic activity, which can be incorporated into two main modalities: industrial creations and signs transmitting information. The rights over industrial creations include, namely, patents of invention, utility models, topography of semiconductor products, designs or models and plant varieties. In commerce, signs used for transmitting information include, namely, trademarks, trade names and insignia, logotypes, rewards and denominations of origin and geographical indications.

Copyright protects literary, artistic and scientific intellectual creations, whatever the genre or manner of expression, namely: literary works; audio-visual works; multimedia works; computer programs (software); applied works of art, drawings or models and designs that constitute artistic creation: illustrations and geographical maps; projects, sketches and plastic works concerning architecture, urbanism, geography or other sciences.

Author's and industrial creations have a double content:

the so-called moral rights that give the intellectual author of the creation the right to claim paternity and integrity over his creation;

and the so-called property rights that give the creator the exclusive right to dispose of the creation, namely, the exclusive right to its economic exploitation in a certain country and within a specified time period. This provides the creator with legal power to prevent copying, imitation or unauthorized use.

Independent of the property rights and even after their termination or extinction, the author enjoys moral rights over his creation.

The protection of intellectual property is based on two essential principles: on the one hand, the author's protection expressed by the provision of an exclusive right and, on the other hand, society's interest on the development of culture, technological innovation and loyal competition.

The University of Minho recognizes that one of its obligations in the development of research activities is the creation of knowledge that contributes to the development and wellbeing of society.

It also recognizes the need to encourage and impulse the awareness of, both the teaching staff and the student body, towards the development of innovative projects and towards the promotion of sustainable ways to value the knowledge created within the University, namely, with the help of a structured support policy to protect and value intellectual property.

Thus, the objectives of the present Regulations are constituted by:

- the creation of an atmosphere that promotes innovation and new knowledge creation on behalf of teachers, researchers and students;
- the promotion of sustainable ways to value knowledge created at the University of Minho, namely, through the protection of intellectual property;
- the promotion of transfer of R&D results to companies and to society in general and, to guarantee an adequate distribution and application of the profits gained from the process.

With the approval of the present Regulations - which introduces some important and necessary changes to the former Intellectual Property Regulations of the University of Minho, approved by Regulation number RT-32/2001 of July 5<sup>th</sup>, in order to adjust to the constant provisions of the present Intellectual Property Code (approved by the Decree 36/2003 of March 5<sup>th</sup>) – rules and procedures that should be observed at the University of Minho are established in the protection and value of the intellectual goods created or attained from the use of its resources.

The present Regulations of Intellectual Property are divided into two parts: Part I regulates Industrial Property Rights and Part II regulates Copyright.

Under these terms, the University adopts the following arrangements:

## PART I

### INDUSTRIAL PROPERTY RIGHTS

#### Chapter 1 **Object of Application**

##### Article 1 **(Object)**

1. To enforce these Regulations, patents for invention, utility models, topography of semiconductor products, designs or models and plant varieties are considered industrial property rights.
2. The present Regulations will be equally applied to new industrial property rights, which may become legally granted, as well as non-patented technical information.

#### Chapter 2 **Ownership of Rights**

##### Section 1 **General terms**

##### Article 2 **(General Principle)**

1. The University determines as a basic principle its right to ownership of industrial property rights related to inventions or other industrial creations conceived and carried out by its teaching staff and researchers, in the scope of their research work, without prejudice of the provisions of Article 5 of the present Regulations.
2. The general principle established in the aforementioned paragraph will be equally applicable to the ownership of industrial property rights in reference to inventions or other industrial creations conceived and carried out by any other personnel hired by the University with legal subordination, not referred to in the aforementioned paragraph, nor comprised by the Scientific Research Professional Statute, in research activities developed in the scope of his contractual agreement.
3. If the research takes place in the scope and in the execution of a contractual agreement between the University and a third entity, the principles foreseen in Article 6 should be taken into account.

##### Article 3 **(Other non-teaching staff)**

The participation of non-teaching staff, namely students, grantholders, Masters and Phd students carrying out research activities that involve the use of the University's means will be subject to previous subscription of a declaration where the ownership of rights over the respective results, as well as, the acknowledgement of enforcement of the present Regulations shall be defined.

#### Article 4

##### **(Moral rights of the inventor)**

The rights awarded to the University in the present Regulations do not prejudice the right of the inventor of being designated as such in the request for protection of the invention or industrial creation.

#### Section 2

##### **Special Terms**

#### Article 5

##### **(Professional Research)**

1. The industrial property rights resulting from the research activity developed within the University in the scope of the respective work, by any researcher comprised by the Scientific Research Professional Statute, will belong to the University, as well as, to the researcher, in the quality of inventor, in equal quotas.

2. The provisions in the aforementioned paragraph will not be applicable if the research activity or development takes place in the scope and execution of a contractual agreement between the University and a third entity. In this case, the principles foreseen in Article 6 will apply.

#### Section 3

##### **R&D Contracts**

#### Article 6

##### **(R&D Contracts)**

1. The contractual agreements between the University and other entities, whose main or accessory object may involve an activity of research or development, should obligatorily foresee the Regulations on industrial property rights.

2. The agreements in the aforementioned paragraph include, namely, those that contemplate the financing of research or development to be carried out by the University.

3. The Regulations referred to in paragraph 1 may stipulate that the University will not have ownership of rights over the results obtained. The decision will be the University's obligation.

4. The acceptance of participation on behalf of anyone, namely a member of teaching staff, employee or student, in the execution of contractual agreements implies the acknowledgement that the industrial property rights over the results will belong to the University or to the entity designated in the agreement.

5. If the contractual agreement so determines, the participants in research and development activities are obligated not to disclose classified information and knowledge they have access to during the execution of the agreement.

6. In the scope of research and development activities, the relationship between the University and associated institutions should be preceded by regulations regarding industrial property rights.

#### Chapter 3

##### **Protection of rights**

#### Article 7

##### **(General terms)**

In the general terms foreseen in Article 2, the University will decide upon the territorial area of protection of the invention or industrial creation once the inventor has been heard. Through the Central Services, it is up to the University to assume the risk capital inherent to the payment of expenses of the legal protection process, as well as, of the maintenance of granted rights.

#### Article 8

##### **(Special terms)**

1. In the special terms foreseen in Article 5, the area of territorial protection of the invention or industrial creation should be object of agreement between the inventor and the University.
2. The expenses and rewards inherent to legal protection will be divided equally amongst the University and the inventor.
3. Neither of the joint-owners can prevent the other owner from requesting legal protection or broader legal protection.
4. In legal terms, the case of joint-property does not prejudice the right of the University to freely exploit the invention or industrial creation.

#### Chapter 4

##### **Exploitation of rights**

#### Section 1

##### **General terms**

#### Article 9

##### **(Competency)**

1. In the general terms foreseen in Article 2, it is the University's responsibility to carryout actions for the adequate exploitation of industrial property rights.
2. The inventor should be informed about all activities having to do with the exploitation process of industrial property rights, as well as, the correct terms of the contractual proposals.

#### Article 10

##### **(Distribution of rewards)**

1. The financial rewards obtained through the exploitation of the research results will be object to the following distribution:
  - 45% for the inventor(s)
  - 45% for the University:
    - 15% for the Department
    - 15% for the School
    - 15% for the Central Services
  - 10% for the payment of risk capital (University – Central Services)
2. The rewards refer to the amount obtained after the costs inherent to the completion of the research and the legal protection of the results, as well as, the rates and taxes have been deducted.
3. The destination of sums for the Central Services will be determined by rectorial order, keeping into consideration the operational intervention and risk capital from the currently existing institutions (Fundação Carlos Lloyd Braga and TecMinho) or from others that, in the future, will carryout the same kind of intervention. The surplus should be subadjcently applied to the support of launching new R&D projects and technology transfer programs, to the development of prototypes, the diffusion of R&D results, the registration of industrial property rights, the promotion of RDT protection and exploitation from the University of Minho.

#### Section 2

##### **Special terms**

#### Article 11

##### **(Competency and distribution of rewards)**

1. In the specific terms foreseen in Article 5, in the absence of an agreement, the celebration of acts or contracts inherent to the exploitation of industrial property rights is of the University's responsibility.

2. The University should maintain the inventor duly informed regarding the course of the contractual proposals and negotiations.
3. The financial rewards obtained through the exploitation of the research results will be equally distributed amongst the University and the inventor.

## Chapter 5

### Organization

#### Article 12

##### **(Specific competencies of the University)**

It is the University's specific competency to:

- a) Implement the principles stipulated by the Regulations and define the complementary norms and procedures necessary to its correct application.
- b) Define the relationship principles between the University and the entrepreneurial and industrial environments, in the scope of research and development and technology transfer.
- c) Decide on the legal protection of research results.
- d) Administer the industrial property rights that exclusively or partially belong to the University.
- e) Elaborate contractual agreements relating to the exploitation of industrial property rights belonging to the University.

#### Article 13

##### **(Delegation of competencies)**

1. In order to implement the provisions set forth in the present Regulations, the University can appoint one or more entities to carryout the acts established in the aforementioned Article, namely those necessary for the protection, exploitation and administration of industrial property rights it is owner or joint-owner of.
2. In the case of the specific terms foreseen in Article 9, if the inventor wishes the University or a third entity appointed for the effect to carryout on its behalf the necessary actions to the protection or exploitation of industrial property rights, this should be stated in writing.

## Chapter 6

### Procedures

#### Article 14

##### **(The obligation of information)**

1. The inventor should inform the University on the execution of the invention or industrial creation within a maximum of three months from the date of its conclusion.
2. Without prejudice to the provision in the aforementioned paragraph, throughout the research and development activity, the inventor should let it be known to the University of the potential results, so as to allow the University to opportunely evaluate the possibilities of protection and value.
3. The information provided in the aforementioned paragraphs should be stated in writing, signed by the inventor, indicating the technical elements regarding the object and scope of applicability of the invention.
4. The information will be remitted to the Rector of the University or to his appointee.
5. The information should contain the term "Confidential" and will be treated throughout the process in a confidential manner, so as not to prejudice the possibility of legal protection of the invention. This will obligate all those involved in the process, namely, the University and the inventor.
6. The inventor should make available all information regarding the invention carried out considered necessary for its legal protection and economic exploitation processes.
7. The University or the entity appointed by it will proceed with the elaboration of a document intended for the communication of the R&D results attained by the inventors.

#### Article 15

##### **(The decision process by the University)**

1. Once the information referred to in Article 14, paragraph 1, has been submitted the University should elaborate within 60 days a fundamented report on its position on the patent request or any other legal title. The University can resort to a third entity, if necessary, according to Article 13, paragraph 1.
2. The report should be immediately submitted to the Rector or to his appointee.
3. The Rector or his appointee should issue a decision within 30 days from the date of submission of the report.
4. The inventor should be immediately informed about the decision referred to in the aforementioned paragraph.
5. If the University decides not to request legal protection, the inventor will acquire sole rights over the invention or industrial creation, including exploitation rights. The inventor can apply for the protection on his own behalf and at his own expense.
6. In the case referred to in the aforementioned paragraph, technical research and development activities can be carried out at the University against previous authorization by the University.
7. The authorization referred to in the aforementioned paragraph should involve the previous regulation of industrial property rights of the University, regarding future developments to be carried out on the invention.

## PART II

### COPYRIGHT

#### Chapter 1

##### **Object of application**

#### Article 16

##### **(Object)**

1. For application purposes of these Regulations, literary, artistic and scientific creations, regardless of genre or form of expression, namely, literary, art, audio-visual, multimedia works, computer programs or any other, are considered creations susceptible to copyright and joint rights protection.
2. The provisions of the present Regulations will also apply to new objects of copyright or joint rights that will, in time, become legally granted.

#### Chapter 2

##### **Ownership of Rights**

#### Section 1

##### **General terms**

#### Article 17

##### **(General principle)**

The University acknowledges as a basic principle ownership of rights, which belong to the creator or author, regarding works conceived and carried out by teaching staff and researchers that occur as a result of their teaching or research activity at the University.

#### Section 2

##### **Special terms**

#### Article 18

##### **(Special cases)**

1. Any of the following situations is an exception to that which is stipulated in Article 17:
  - a) The work carried out occurs as a result of an agreement with the University.
  - b) The work carried out or concluded involves significant use of the means or provisions of the University.
2. In the cases identified in the aforementioned paragraph, the University may have copyright ownership . The decision is up to the University.
3. In any circumstance the creator of the work will maintain the moral rights foreseen in the applicable legislation.

#### Article 19

##### **(Contracts)**

1. The contractual agreements between the University and other entities, whose main object or accessory involves the creation of copyright works, should obligatorily contemplate the ownership and exploitation regulations to those respective rights.
2. The regulations referred to in the aforementioned paragraph may stipulate that the University will not be the owner of rights inherent to the results obtained. This decision is up to the University.
3. The contractual agreements referred to in paragraph 1 include, namely, those that foresee the financing of work to be carried out by the University.
4. The approval of participation on behalf of anyone, namely, of teaching staff, employees or students in the execution of contractual agreements involves the acknowledgement that the industrial property rights over the results belong to the University or to the entity appointed in the agreement.
5. The relationship between the University of Minho and associated institutions, in the scope of creation activities of author's works, should be preceded by regulations regarding copyright.

#### Article 20

##### **(Significant or decisive use of the University's means)**

1. The realization of work that involves the significant or decisive use or availability of the University's means or provisions requires previous authorization once a request has been made by the interested party.
2. The aforementioned authorization should contemplate the regulations of ownership and exploitation of the respective copyright.

#### Article 21

##### **(Distribution of rewards)**

1. The financial rewards obtained by the University regarding the exploitation of rights will be object to the following distribution:
  - 50% for the creator(s)
  - 20% for the Department
  - 20% for the School
  - 10% for the Central Services
2. The rewards refer to the net revenue, excluding deductions.
3. In the event that there are more than one creator the distribution of rewards will be equal amongst the parties, with the exception of the existence of a contractual agreement between the parties that establish another form of distribution.

#### Chapter 3

##### **Organization**

#### Article 22

##### **(Specific competencies of the University)**

It is of the University's specific competency to:

- a) Implement the principles stipulated in the present regulations and define the complementary norms and procedures necessary to its correct enforcement.

b) Define the relationship principles between the University and Society, in the scope of creation activities.

c) Administer and exploit copyrights that belong, exclusively or partially, to the University.

Article 23

**(Delegation of competencies)**

The University can appoint one or various institutions to carryout the tasks related to the protection, exploitation and administration of the copyrights.

## GENERAL AND TRANSITORY PROVISIONS

Article 24

**(Coming into force)**

The present Regulations of Intellectual Property will come into force immediately once it has been approved and published.

Article 25

**(Omitted cases)**

Any omitted case should be integrated according to the general legislation and principles of law.