

The Chinese University of Hong Kong

Policy on Intellectual Property

(With effect from: 1 August 2020)

N.B. Please refer to the “Policy on Research” at https://www.orkts.cuhk.edu.hk/images/Research_Funding/Policy_on_Research_2020.pdf for policies on research related matters

I. PREAMBLE

1. Introduction
2. Administration and Implementation of this Policy
3. Review and Feedback

II. OWNERSHIP OF INTELLECTUAL PROPERTY

4. Definition of Intellectual Property
5. Intellectual Property Created by Staff
6. Intellectual Property Created by Students
7. Intellectual Property Created by Visiting Scholars

III. DISCLOSURE AND PROTECTION OF INTELLECTUAL PROPERTY

8. Disclosure and Protection of Intellectual Property

IV. COMMERCIALISATION OF INTELLECTUAL PROPERTY

9. Commercialisation of Intellectual Property

V. GLOSSARY

10. Glossary

I. PREAMBLE

1. Introduction

<i>University mission</i>	1.1	The Mission of the University is to assist in the preservation, creation, application and dissemination of knowledge by teaching, research and public service in a comprehensive range of disciplines, thereby serving the needs and enhancing the well-being of the citizens of Hong Kong, China as a whole, and the wider world community.
<i>Mission with regard to entrepreneurship and knowledge transfer activities</i>	1.2	As an international centre of research excellence, the University strives to nurture innovation, entrepreneurship and knowledge transfer for the advancement of humanity.
<i>Protection of Intellectual Property</i>	1.3	Much cutting-edge research conducted at the University leads to discoveries and Inventions that are potentially useful or valuable. The University needs to stake its claims and to position itself to develop these research activities to the fullest. The objective is to achieve the broadest possible impact on the academic and scientific community at large, and to benefit the public.
<i>Retention of Intellectual Property rights</i>	1.4	The scope and quality of the University's research has been facilitated by the extensive external grants and contracts awarded by the University Grants Committee, Research Grants Council, foundations and industry. Unless otherwise stated in this Policy, the University will own all Intellectual Property arising from research at the University, in order to ensure that the results can be exploited for the benefit of the public to the broadest extent possible. The ownership of Intellectual Property may reside with any government body, or any statutory body if the University considers appropriate.
<i>Respects third parties' Intellectual Property</i>	1.5	The University respects the Intellectual Property rights of third parties. Staff shall observe all relevant laws, regulations and guidelines to ensure that their research and academic activities, and the related outputs, will not infringe any Intellectual Property rights of third parties.
<i>Glossary</i>	1.6	A glossary of terms used in this Policy (identified by the capitalisation of the term's first letter) is included in Section V of this Policy.

2. Administration and Implementation of this Policy

<i>Approving authority</i>	2.1	This Policy comes into effect upon approval by the University's Administrative and Planning Committee ("AAPC"), Senate and the Council. The relevant approval(s) from one or more of these bodies is/are required for any significant changes in the future.
<i>Implementation procedures and guidelines</i>	2.2	This Policy will be administered by the Pro-Vice-Chancellor (Research). The implementation procedures and guidelines that give substance to this Policy will be prepared by the relevant administration units. The implementation procedures and guidelines must be consistent with this Policy.
<i>Replacement of certain regulations</i>	2.3	This Policy replaces those deleted provisions on intellectual property and knowledge transfer activities in the "Policy on Research, Intellectual Property and Knowledge Transfer" (with effect from 1 January 2015). The latter was jointly replaced by this Policy and the Policy on Research as of 1 August 2020.

Exceptions 2.4 Exceptions to this Policy may be approved by the AAPC, Senate or the Council, as the case may be, on a case-by-case basis.

3. Review and Feedback

Review and feedback 3.1 This Policy needs to be reviewed from time to time to ensure consonance with changing circumstances and to achieve maximum efficiency. Feedback and suggestions are welcome, and should be addressed to the Pro-Vice-Chancellor (Research).

II. OWNERSHIP OF INTELLECTUAL PROPERTY

4. Definition of Intellectual Property

Definition of Intellectual Property 4.1 In this Policy, Intellectual Property refers to all types of intellectual proprietary rights, including but not limited to:

- (a) Patents granted in relation to Inventions;
- (b) Copyright materials (including Software and Database);
- (c) Registered Designs;
- (d) Plant Variety Rights;
- (e) Circuit Layout Rights;
- (f) Trade Secrets and Know-How:
 - (i) up to the time of the publication of a Patent application, or
 - (ii) which are never made the subject of an application for Intellectual Property registration; and
- (g) Trade Marks.

For details on the abovementioned Intellectual Property, please refer to Glossary, Section V of this Policy.

5. Intellectual Property Created by Staff

Ownership of Intellectual Property by Law 5.1 In the course of fulfilling Staff's duties, Intellectual Property may be Created. In accordance with the laws of Hong Kong, Intellectual Property Created by employees, i.e. all Staff Members of the University, in the course of their employment and within the scope of the duties described in their contract of employment is owned by the University. However, the University will not assert ownership of certain Intellectual Property as provided under Paragraphs 5.2, 5.6 and 5.7 below.

Special ownership arrangement of Scholarly Work 5.2 (a) Subject to Paragraph 5.2(b), the Copyright in Scholarly Work is owned by Staff Member.

(b) Subject to ownership arrangement(s) agreed with publishers, Staff grants to the University an irrevocable, free, perpetual, non-exclusive, worldwide licence to use, reproduce, translate and disseminate (including by electronic, on-line, and other

means) Copyright in the Staff's Scholarly Work during and after Staff Member's employment by the University.

- Teaching Materials* 5.3 (a) Notwithstanding that the Copyright in Teaching Materials Created by Staff Members in the course of employment at the University is owned by the University, the University will, subject to any contractual obligations of the University, grant an irrevocable, free, perpetual, non-exclusive, worldwide licence to the Creator to use any Teaching Materials, which is Created by himself/herself, for non-commercial teaching and research purposes during and after Staff Member's employment by the University.
- (b) The Copyright and eLearning Guidance concerning Teaching Materials can be found at http://www.cuhk.edu.hk/aqs/AQSHomepageIndex/e_learning.pdf, which may be amended from time to time.
- Assigned Work* 5.4 All Intellectual Property of Assigned Work is owned by the University unless otherwise approved by the University.
- Moral Rights of Copyright work* 5.5 The University recognizes the Moral Rights of Staff Members who Create Copyright work. However, Staff Members automatically waive the Moral Rights in relation to Copyright work that is:
- (a) Assigned Work;
- (b) commercialised; or
- (c) produced under a consultancy, service or research agreement.
- Release of Software under Open Source Licence and for non-commercial use* 5.6 The University allows the release of Software Created by a Staff Member under Open Source Licence or for non-commercial use at the Staff Member's discretion after informing ORKTS. Notwithstanding the foregoing, Staff members are free to release any improvement of open sourced technologies without informing ORKTS if such release is required under the applicable open source licence.
- Release of Database for non-commercial use* 5.7 The University allows the release of Database Created by a Staff Member for non-commercial use at the Staff Member's discretion after informing ORKTS, provided that such release shall comply with the:
- (a) applicable local or foreign data protection or privacy laws and regulations, including but not limited to the *Personal Data (Privacy) Ordinance* Cap 486;
- (b) contractual obligations of the University, if any;
- (c) requirements under ethical approval, if any; and
- (d) prescribed consent provided by the data subjects, if any.
- Right to publish* 5.8 Notwithstanding its ownership of the Intellectual Property, the University will not restrict the right of Staff Members to publish their findings subject to any regulatory constraints or contractual obligations of the University. Staff Members shall observe any regulatory constraints and his/her own contractual obligations, if any.
- Assignment by Staff* 5.9 All Staff shall cooperate with the University and take all actions necessary to assign Intellectual Property to be owned by the University to the University.

6. Intellectual Property Created by Students

<i>Research postgraduate Students</i>	6.1	Research postgraduate Students receiving financial support from the University (e.g., graduate assistantships, research assistantship or studentship) undertaking research involving use of the University's facilities and resources, are required to assign the Intellectual Property Created in the course of that research to the University.
<i>All other Students</i>	6.2	All other Students (such as self-financed research postgraduate Students, taught postgraduate Students, undergraduate Students, exchange Students, visiting Students) are required to assign to the University the Intellectual Property Created in the course of a research led by a Staff Member that involves use of the University's facilities and resources before they commence such research activities.
<i>Students enrolled under agreement</i>	6.3	Paragraphs 6.1 and 6.2 do not apply if any Student (such as Students enrolled in dual degree programme co-hosted by the University with another institute) whose enrollment is subject to a contract executed between he/she, the University and/or another institute (as the case may be) and the contract stipulated the ownership arrangement of Intellectual Property Created by such Student.
<i>Copyright in thesis</i>	6.4	Paragraphs 6.1 and 6.2 do not apply to the Copyright in a Student's thesis which at all times is owned by the Student. Students grant to the University a non-exclusive licence of the Copyright in the Student's thesis for the University's scholastic and academic use.
<i>Terms of assignment</i>	6.5	Any assignment of Intellectual Property by a Student to the University must include the following terms: (a) the Student owns the Copyright in the Student's thesis (if applicable); and (b) the Student will share in any Commercialisation Revenue from the Commercialisation of the Intellectual Property to the same extent as if the Student was a Staff Member.
<i>Internal guidelines on Student assignment</i>	6.6	Staff Members shall observe the internal guidelines on Student assignment of Intellectual Property at https://www.orkts.cuhk.edu.hk/images/Policy/student_assignment_of_IP_2020.pdf .

7. Intellectual Property Created by Visiting Scholars

<i>Visiting Scholar under agreement</i>	7.1	Where there is an agreement in place between the University and a Visiting Scholar or his/her employer that deals with the ownership of the Intellectual Property Created by the Visiting Scholar, the Intellectual Property Created will be owned in accordance with the terms of that agreement.
<i>Visiting Scholar with no agreement</i>	7.2	Where there is no such agreement as stipulated under Paragraph 7.1 but the Visiting Scholar has made use of the University's facilities and resources, the Intellectual Property Created by the Visiting Scholar will be owned by the University. The Visiting Scholar and/or the Visiting Scholar's employer need(s) to sign any document reasonably required by the University to vest the ownership of that Intellectual Property in the University.

III. DISCLOSURE AND PROTECTION OF INTELLECTUAL PROPERTY

8. Disclosure and Protection of Intellectual Property

<i>Invention Disclosure for Patent</i>	8.1	<p>While patentable Inventions may be identified during the normal monitoring of research or knowledge transfer projects by the relevant administration offices, the burden falls primarily on the Creators, who are hereby reminded that "time is of the essence" in the filing of patentable Inventions and research or knowledge results. Creators must promptly notify ORKTS, by completing an Invention Disclosure Form at http://www.orkts.cuhk.edu.hk/intellectual-property-licensing/download-forms and submitting it to ORKTS, of any potentially patentable Inventions. This obligation is not intended to interfere with the prompt publication of research results.</p> <p>The University recognizes the principle of fairness: credit is assigned where credit is due. Staff Members should recognize the contributions of other Staff and Students to their research and scholarly undertakings and reflect the same in the Invention Disclosure Form.</p>
<i>Protection of patentable Intellectual Property</i>	8.2	<p>The University pursues the protection (including patenting) of Intellectual Property. The cost of acquisition of such Patent properties, including legal fees, shall be borne by (a) the University as deemed appropriate in the University's sole discretion by the Patent Committee, or (b) the Creator(s).</p>
<i>Use for maximum public benefit</i>	8.3	<p>It is the Policy of the University that all Intellectual Property be utilized for the greatest possible public benefit. The University will seek to serve and protect the public interest by diligent efforts to transfer the technology and knowledge into public use.</p>
<i>Legal and administrative action</i>	8.4	<p>If the University's Intellectual Property is, or has been infringed or challenged by a third party, the procedures for administering and funding legal and/or administrative action shall be decided by the University on a case-by-case basis.</p>

IV. COMMERCIALISATION OF INTELLECTUAL PROPERTY

9. Commercialisation of Intellectual Property

<i>Commercialisation of Intellectual Property</i>	9.1	<p>The University pursues the Commercialisation of Intellectual Property. Normally, it will occur by granting licences upon commercial terms. ORKTS facilitates Commercialisation of Intellectual Property by seeking licensees, and negotiating the terms of licences.</p>
<i>Acceptance of financial interest in company</i>	9.2	<p>The University may, in some circumstances, consider accepting financial interest in a company in addition to income sharing in exchange for licences to the University's Intellectual Property, whether present or future. The University must then be sensitive to potential conflicts of interest.</p>
<i>Disclosure</i>	9.3	<p>Circumstances may arise in which an effective way to transfer a technology is to license an Intellectual Property to a company in which either the University or a Staff Member has substantial financial interest. In such cases, the financial interest must be fully disclosed to all parties, and sound objective reasons for choosing the company as licensee must be documented.</p>

<i>Sharing Commercialisation Revenue for Creators</i>	9.4	The University will share Commercialisation Revenue that it receives from the Commercialisation of Intellectual Property with the Creators of the Intellectual Property. The proportion is set out in the Invention Disclosure Form and Invention assignment as per prevailing policy of the University. The income sharing will continue for as long as income is received, including after the Creator's employment ends and after the Creator's death, when the income share will go to his/her estate. For the avoidance of doubt, the University will only be responsible for General Expenses under the gross income sharing model as stipulated in the Invention Disclosure Form. When there is legal or administrative action concerning Intellectual Property of the University which is, or has been infringed or challenged by a third party, the payer of costs and expenses for legal and/or administrative actions will be determined on a case-by-case basis as stipulated in Paragraph 8.4.
<i>Sharing Commercialisation Revenue for University</i>	9.5	<p>Unless the Department or Faculty has sustained the full costs of Patent acquisition, after deduction of income for Creator(s) specified in Paragraph 9.4 and relevant expenditures from the Commercialisation Revenue:</p> <ul style="list-style-type: none"> (a) 60% of the remaining balance will be distributed to the University Central Fund; and (b) 40% of the remaining balance will be distributed to the Faculty concerned. The Dean will have the discretion to make appropriate distribution (from the Faculty's share) to the Department/Unit concerned.
<i>Start-up companies</i>	9.6	<ul style="list-style-type: none"> (a) The University encourages Staff and Students to consider starting up a company to commercialise the Intellectual Property that they Create. (b) Where such a company is formed, the University may grant a licence of the applicable Intellectual Property to that company upon terms negotiated in good faith between the University and the company. (c) Staff Members are required to inform the Chairperson of the Research Committee and the Chairperson of the Committee on University Subsidiaries and Spin-off Companies, promptly and in writing, of any consulting for, or substantial holdings in, any company/companies with which their research at the University becomes involved.

V. GLOSSARY

10. Glossary

<i>Assigned Work</i>	10.1	An Assigned Work is any work performed or Created by a Staff Member at the University's request, which is beyond the scope of his/her duties described in the contract of employment.
<i>Circuit Layout and Circuit Layout Rights</i>	10.2	Circuit Layout is the representation of an integrated circuit or circuit component in terms of geometric locations and shapes that correspond to the patterns of metal, oxide, or semiconductor layers that make up

the integrated circuit or the circuit component. **Circuit Layout Rights** protect the layout plans or designs of electronic components in integrated circuits, computer chips, or semi-conductors.

<i>Commercialisation</i>	10.3	Commercialisation is the process of transferring Intellectual Property into a product or service. Depending on the context of its use, it can refer to the process of licensing Intellectual Property, as well as the transferring process, or product development phase undertaken by a licensee.
<i>Commercialisation Revenue</i>	10.4	Commercialisation Revenue is the revenue received by the University from the Commercialisation of Intellectual Property, including: (a) gross royalties, milestone payments, up-front payments, licence fees etc.; and (b) proceeds of sale of Intellectual Property.
<i>Copyright</i>	10.5	Copyright is the right to reproduce, publish and disseminate the following original work: (a) literary works such as Software, Database, novels, poems, newspaper articles, lyrics; (b) artistic works such as paintings, sculptures and photographs; (c) musical works such as scores and musical compositions; (d) dramatic/recorded works such as films, sound recordings, broadcasts or cable programmes; and (e) the typographical arrangement of published editions and certain types of performances. Copyright exists from the time of its creation. Registration is not necessary.
<i>Create</i>	10.6	To Create in the context of Intellectual Property, means to invent (e.g., an Invention), create (e.g., a Know-How), write (e.g., a Software), design (e.g., a Circuit Layout), or to discover or conceive an Intellectual Property.
<i>Creator</i>	10.7	A Creator means a Staff Member, Student or Visiting Scholar at the University who has Created Intellectual Property.
<i>Database</i>	10.8	Database is a collection of works (e.g., photographs or videos), information, data, including personal data (e.g., names or phone numbers) or any materials, including biological materials (e.g., human samples, tissue, blood, cell line or genetic sequence) that are arranged in a systematic or methodical way and are individually accessible by any means for extraction or utilization.
<i>General Expenses</i>	10.9	General Expenses mean the following expenditures incurred by the University for its Intellectual Property: (a) cost for filing, registering, prosecuting and/or maintaining Intellectual Property; (b) cost for effecting licensing or other commercial transactions; (c) Administration cost of the University;

		(d) cost which led to the creation or generation of Intellectual Property; or
		(e) any other cost of similar nature.
<i>Intellectual Property</i>	10.10	Intellectual Property is a broad label that encompasses all forms of intangible intellectual output. For the purpose of this Policy, Intellectual Property includes, but is not limited to, all Intellectual Property rights mentioned under Paragraph 4.1.
<i>Invention</i>	10.11	An Invention is a new scientific or technical idea, concept, discovery, method that has been reduced to practice, and can be transformed into a new product or process.
<i>Invention Disclosure Form</i>	10.12	An Invention Disclosure Form is a form by which Staff and Students notify ORKTS of Intellectual Property they Create at the University.
<i>Know-How</i>	10.13	Know-How is scientific or technical tacit knowledge of how to do or accomplish something. Whether recorded or not, Know-How is not protected by registration protection therefore relies on the holder to maintain its secrecy.
<i>Moral Rights</i>	10.14	<p>Moral Rights are the following rights of an author of a Copyright work:</p> <ul style="list-style-type: none"> (a) the right of attribution of authorship (i.e., the right to be identified as the author of a work); (b) the right of integrity of authorship (i.e., the right not to have a work treated in a derogatory way); and (c) the right not to have authorship falsely attributed (i.e., the right not to have a work falsely credited). <p>Moral rights are separate to Copyright and can continue independently of the transfer of ownership of Copyright.</p>
<i>Open Source Licence</i>	10.15	Open Source Licence is any licence that conformant to the open source definition as listed in this link: https://opensource.org/osd .
<i>ORKTS</i>	10.16	ORKTS is the University's Office of Research and Knowledge Transfer Services.
<i>Patent</i>	10.17	A Patent is a grant recognized under the <i>Patents Ordinance</i> Cap 514 or any other applicable law which protects Inventions by giving the Patent owner a right to prevent others from using, making, selling, manufacturing or importing such Invention in relevant jurisdiction.
<i>Plant Variety Rights</i>	10.18	Plant Variety Rights protect new breeds, cultivar, clone, hybrid, stock or line of plants from the time of registration under either the <i>Plant Varieties Protection Ordinance</i> Cap 490 or any other applicable law.
<i>Registered Design</i>	10.19	A Registered Design protects the shape, configuration, pattern or ornamentation of a product, that is, what gives a product a unique appearance. Protection starts when the design is registered either under the <i>Registered Designs Ordinance</i> Cap 522 or any other applicable law.
<i>Scholarly Work</i>	10.20	A Scholarly Work is any form of academic publication, including journal articles, book chapters, textbooks, and presentations made at scholarly conferences.

<i>Software</i>	10.21	Software means computer programs including a combination of Software, associated data, source codes and object codes, etc.
<i>Staff or Staff Member</i>	10.22	Staff or Staff Member is a person employed by the University.
<i>Student</i>	10.23	A Student is a person enrolled in any degree, diploma, subject or unit offered by the University whether on a full-time or part-time basis, or at an undergraduate or postgraduate level.
<i>Teaching Materials</i>	10.24	Teaching Materials are Copyright materials used in a course for teaching lectures, tutorials, seminars, workshops, field or laboratory classes, and other teaching activities conducted by the University. It includes slides, photographs, maps, diagrams, handbooks, manuals, computer programs and multimedia works, etc. that serve a teaching function. For the avoidance of doubt, Teaching Materials include all Copyright in educational audio-visual works produced by a Staff Member in the course of employment at the University, including films, sound recordings, videos, photographs, and the content (including text, question banks, diagrams, tables, data, charts, images, etc.) within them, as well as all digitised versions or audio-visual adaptation of Teaching Materials.
<i>Trade Mark</i>	10.25	A Trade Mark is a unique graphical representation, which may consist of word, letter, number, phrase, color, sound, smell, sign, etc. that distinguishes a product or service from another. Protection starts when the Trade Mark is registered either under the <i>Trade Marks Ordinance</i> Cap 559 or any other applicable law.
<i>Trade Secret</i>	10.26	Trade Secret generally refers to confidential information that has an economic value. Whether recorded or not, it is not protected by registration therefore it relies on the holder to maintain its secrecy.
<i>University</i>	10.27	University means The Chinese University of Hong Kong.
<i>Visiting Scholar</i>	10.28	A Visiting Scholar is a scholar who undertakes research, teaching and/or any other activities at the University as a visitor.