

IGNOU IPR POLICY

SECTION 1

INTRODUCTION

1.1 PREAMBLE

Indira Gandhi National Open University (IGNOU) was established in 1985 through an Act of Parliament of India for the introduction and promotion of Open University and distance education systems in the educational pattern of the country. It caters to the academic needs of millions of learners throughout India and abroad. In its functioning as a premier institution in the open distance learning (ODL) system, IGNOU is involved in creation of various intellectual properties through the development of its study material and research activities. This document relates to the Intellectual Property Rights (IPR) policy with an objective to facilitate protection and use of such Intellectual Property (IP) and address the interests of the IP creators while remaining in sync with the objects of the University as enshrined in the IGNOU Act.

Implementation of this Policy shall be carried out by the Intellectual Property Cell (IP Cell) formed as per the statutory provisions of IGNOU. Before being appointed by IGNOU or as soon thereafter as possible, each employee, research student and/or a contract person shall be informed of this IPR Policy and s/he shall acknowledge in writing that s/he has been so informed and agrees to adhere to the Policy including any and all amendments.

1.2 OBJECTIVE OF THE POLICY

This Policy is framed to achieve the following objectives:

- a) To create and sustain academic environment that encourages the generation of new knowledge by teachers, other employees and students.
- b) To enable IGNOU to discharge its responsibility of protecting its Intellectual Properties and the interest of the creators of Intellectual Property
- c) To provide an organizational structure and procedures through which the intellectual property created by and at / for IGNOU may be made available for use / transfer in a manner consistent with the mandate of IGNOU.
- d) To ensure that economic returns from the development and deployment of intellectual property do not distort / dilute decisions and operations of IGNOU in a manner contrary to its mandate.

1.3 SCOPE OF THE POLICY

The material put forward in this document relates to an IPR policy (and related administrative procedures) with the objective that:

- a. It enables IGNOU to discharge its primary responsibility of fostering, stimulating and encouraging creative activities in the area of distance education, discipline based education and research in the widest sense
- b. It lays down the norms to protect the legitimate interest of teachers/students/ employees of IGNOU, and benefit the society in a rational manner consistent with the mandate of the IGNOU.
- c. It provides a transparent administrative system for the ownership, control and transfer of the intellectual property created and owned by IGNOU

It applies to teachers, students, other employees and non-employees who participate in programme / course development / organisational activities or are engaged in any kind of research projects in IGNOU. It also provides provisions to safeguard IGNOU's interest, that are applicable when any organization sponsors or collaborates with IGNOU for programme development/delivery or project activities.

1.4 TYPES OF INTELLECTUAL PROPERTY

The intellectual properties can be broadly listed as:

- a. **Copyright** - Copyright protection subsists in original works of authorship such as scholarly articles (e.g. learning material), novels, poems, plays, reference works, newspaper articles, computer programs, databases, films, musical compositions and choreography; artistic works such as paintings, drawings, photographs and sculpture, architectural works, advertisements, maps and technical drawings, cinematography; and sound recordings.
- b. **Patent**- is an exclusive right granted by government of a country for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem and that meets the criteria of being new, non-obvious and capable of industrial application.
- c. **Trademark** - A trademark is a mark (a distinctive sign) capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.
- d. **Industrial Design** - means only the features of shape configuration patterns or ornament applied to any article by any industrial process or means whether manual mechanical or chemical separate or combined which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trade mark.

- e. **IC Layout Design** - means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit.
- f. **Traditional Knowledge** - The knowledge developed by the indigenous or local communities for the use of a natural resource with respect to agriculture, food, medicine etc. over a period of time and has been passed from one generation to another traditionally.
- g. **Geographical Indications (GI)** - It is an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

1.5 DEFINITIONS

1. Activity- Activities means all and any tasks carried out in relation to course development, course delivery, teaching, research, consultancy at and for IGNOU.
2. Assignment is transfer of ownership of IP rights from one entity to another entity.
3. Block: A course is divided into “blocks”. The block appears in the form of a booklet presenting one unified theme.
4. Courses: The programme is divided into courses. Course describes the teaching materials and other components of the study. Typically a course consists of printed or electronic form of Self learning Instruction Material, audio, video project, Lab –based, internship and any other components or a combination of aforesaid components as prescribed in the curriculum of the courses
5. Course material includes both conventional and technology supported teaching and learning material.
6. Course ware is technology supported teaching and learning material.
7. Course writer : “Course writer” is an expert identified by the School for the purpose of contributing a unit in the course being developed by the school
8. Distance Education System: “Distance education system” means the system of imparting education through any means of communication such as broadcasting, telecasting, correspondence, seminar, contact programmes online, computer mediated or the combination of any two or more of such means;

9. Employee: “Employee” means any person appointed by IGNOU, and includes teachers and other academic staff of IGNOU.
10. Exclusive license is a license that excludes the use of IPR licensed to everyone but the licensee by the licensor.
11. License: An authorization granted by an IPR by holder to another party to reproduce, sell, use or distribute the work or product or process.
12. Licensor is the party that grants a license to the other party.
13. Licensee is the party which receives the license to use, sell or reproduce the IP licensed by the licensor.
14. Non-employees - Non-employees are those who are not on roll of IGNOU, but associated with activities of IGNOU, including visiting faculty, student or any other person.
15. Non-exclusive license implies grant of a license to several licensees by the licensor.
16. Programmes of IGNOU: “Programme” means the curriculum or combination of courses in a particular field of study, successful completion of which leads to certification.
17. Research Work: The research work carried out by a student for MPhil/PhD programme of IGNOU or the work carried out by the project staff while working on a sponsored / collaborative project
18. School: “School” means a School of Studies of the IGNOU
19. Sponsored Project: Study and Research Project which is undertake at IGNOU with external support and funding.
20. Student: “Student” means a student of the IGNOU, and includes any person who has enrolled himself / herself for pursuing any programme /course of study of the IGNOU;
21. Student Project: “Student project” is the project work carried out by a student for completion and certification of an IGNOU programme
22. Teachers: “Teachers” means Professors , Associate Professors, Readers, Assistant Professors, Lecturers and such other persons as may be designated as such by the Ordinances for imparting instruction in IGNOU or for giving guidance or rendering assistance to students for pursuing any course of study of IGNOU;
23. Unit: The term “unit”, of a course denotes a part of a block or a lesson, in terms of the theme. A unit, is a self-contained portion of a block covering one or more interwoven learning concepts.

For comprehensive understanding of the various IPs, the respective National Laws / Acts. may be referred to.

The definitions used in this Policy are not meant to replace but, only complement the definitions as provided in the IGNOU Statutes and Ordinances.

SECTION 2

OWNERSHIP OF INTELLECTUAL PROPERTY

2.1 INTRODUCTION

IGNOU is involved in various activities related to programme development and delivery. There is also strong research activity underway. During these activities various types of IPs such as copyright, trademarks and patents are generated. The ownership of these IPs will be decided as detailed in the following subsections.

2.2 TYPES OF ACTIVITIES LEADING TO GENERATION OF INTELLECTUAL PROPERTY AT IGNOU

The main activities leading to generation of intellectual property include:

- Course preparation (Print/on-line)
- Teleconferencing sessions/lectures
- Systemic/discipline based research
- Innovation in delivery mechanism
- Software development/got developed by IGNOU for its functional purpose
- Audio / video and multimedia production
- Training packages for staff at all levels
- Research studies
- IGNOU Publications for promotional activities and dissemination of information like profile, Annual Report, VC's Report and Brochures of various Schools, Centres and Divisions
- Projects undertaken and funded by IGNOU
- Question Banks and question papers of IGNOU
- Journals and Books published
- Databases, digital content and computer programs.
- Tools and platforms developed for various programmes

2.3 OWNERSHIP OF IP

A Copyrights

(1) IGNOU owned

IGNOU shall own copyright in any institutional work that is :

- i. created by the employees of IGNOU as part of their employment responsibilities

- ii. commissioned by IGNOU (*IGNOU shall enter into prior agreement with the persons who have been engaged for preparing course or publicity or other material, including software, requiring the person to assign all copyrights in such works to the IGNOU*)
- iii. created under the terms of a sponsored project, wherein the terms of the sponsored project provide for ownership of copyright by IGNOU solely or jointly with sponsoring agencies.

Institutional works include the following works (usually an outcome of activities at 2.2 above):-

- Works created for a specific IGNOU use.
- Compendia and periodicals.
- Course contents and courseware
- Works created as a result of collaboration between two or more different schools of studies.
- Videotapes and recordings
- Software.
- Databases etc.

(2) Employee owned

Creator of works such as textbooks other than the course ware non-fiction, novels, articles, poems, musical composition and artistic work whether disseminated in print or electronically shall own the copyright.

(3) Student works

- a) Students shall own the copyrights in their thesis; however, a student must, as a condition to a degree award, grant royalty-free permission to IGNOU to reproduce and publicly distribute copies of his/her thesis or use its contents for further research by IGNOU teachers / students. Moreover, the research results in a thesis shall be governed by respective clauses related to other forms of IP.
- b) Ownership of reports generated by research that is performed in whole or in part by a student with financial support in the form of wages, salaries, stipend, scholarship or grant from funds administered by IGNOU or utilizing equipment, resources or facilities provided to IGNOU shall be determined in accordance with the terms of any associated agreement, or in the absence of such terms, shall become the property of IGNOU.
- c) Ownership of works other than thesis created by students without significant[#] use of IGNOU facilities or equipment shall vest with the students.

[#] Ordinary/incidental use of resources such as the library, one's office, desktop computer is not considered to be substantial / significant use of IGNOU resources.

B. IPs other than copyrights (eg Patent, Industrial design, IC layout design etc.)

- i. All rights with respect to research carried out within IGNOU, whether by / for IGNOU, or with the utilization of the resources of IGNOU, shall vest in IGNOU, and IGNOU shall be the absolute owner of the intellectual property so created, except in the case of the activities carried out jointly with / under sponsorship of third party, governed by an agreement.
- ii. Intellectual property created by IGNOU employees, students and staff as per (i) above shall be owned by IGNOU and the respective employees, students and staff shall assign the rights to IGNOU.

iii. Sponsored and Collaborative research

a. Sponsored Research

In the case of the sponsored research, the ownership would be decided as per the mutual written agreement.

b. Collaborative Research

In the case of the Collaborative Research, the ownership would be decided as per the mutual written agreement.

Accordingly, all individual participants to the sponsored or collaborative research are under obligation to assign their rights to the respective party and sign requisite Invention and Copyright Agreements.

In the event, an agreement does not specify the ownership arrangement and/or the other party is not interested in securing protection of the intellectual property, IGNOU may, after due evaluation, decide to protect the intellectual property and then the ownership shall vest with IGNOU. Accordingly, the other party shall be requested to assign its rights to IGNOU.

In rare cases and subject to a written mutual agreement between the parties, IGNOU may allow the sponsor/ collaborator to claim ownership to specific intellectual property resulting from a joint activity.

(iv) Creator Owned

In the event the intellectual property is not falling under any of the above situations defined for IGNOU or the other Party, and is not related to the employee's employment responsibilities or to the scope of research defined for a student, IGNOU shall not own such intellectual property and its ownership shall vest with the creator.

C. Trademarks

IGNOU shall be the exclusive owner of trade and service marks; these include, but are not limited to logos, trade names, trade dress, phrases and jingles and the like.

D. Protection of Biodiversity and Traditional Knowledge

IGNOU affirms that it shall abide with the provisions related to biodiversity under the Biological Diversity Act, 2002. Employees of IGNOU shall ensure that these provisions are not violated during the course of their research and in securing any intellectual property protection or use of such knowledge.

IGNOU and its employees and students shall remain cognizant of their responsibilities towards traditional knowledge and GI

2.4 WAIVER OF IP RIGHTS BY IGNOU

IGNOU, with the approval of its Board of Management, may allow a waiver of its intellectual property rights in special cases on the recommendations of IP Committee, Research Council and Academic Council. Such rare instances should not be used as precedence for other cases.

SECTION 3

TRANSFER AND USE OF INTELLECTUAL PROPERTY

3.1 INTRODUCTION

The main functions of a university include education, research and public service. In this context, IGNOU aims to channelize its efforts to bring the fruits of knowledge and research for public use and benefit. IGNOU is involved in the creation of vast body of copyrighted material in form of its study material. This material can be used for enriching the teaching/ learning experience for the students of other State Open Universities (SOUs) and academic institutions of repute by entering into collaborative arrangements governed by licensing / assignment mechanisms of transfer.

3.2 IP LICENSING AND ASSIGNMENT

A. Copyright

- 1) Making learning materials available to students and others can raise many copyright issues; therefore, such materials may be posted and shared only in a manner consistent with copyright law, which gives legal protection to nearly all text, images, audio-visual recordings, and other materials, whether available on the Internet or in any other medium. For any such dissemination to be free of any encumbrance, it is extremely important that IGNOU be the copyright owner of the material or the material is made available by 'linking' rather than 'copying' or permission of copyright owner is available or the material is in the public domain or has been rendered Open Access or Open Source by the rights holder or the use is within "fair dealing" under the law.
- 2) Any employee who owns copyright in his or her works (as in Sec. 2.3 A (2)) may, after duly intimating IGNOU:- commercialize those works or make the work freely available on non-commercial terms or make the work freely available for academic and scholarly use provided IGNOU's name / logo is not used in connection with the works so made available, other than identifying oneself as an employee of IGNOU,

B. Patents and other inventions

- 1) IGNOU reserves the sole right to pursue commercial exploitation of intellectual property generated by its teachers, research students or other employees. It may exploit intellectual property for public good through exclusive or non-exclusive licensing and/or assignment of intellectual property on terms and conditions, as deemed appropriate by IGNOU.
- 2) In case of intellectual property generated from sponsored and collaborative projects, the terms of agreement shall determine the commercial rights, if any. In any case, IGNOU shall retain a non-exclusive royalty free right to use intellectual property for non-commercial purposes including teaching and research.

3.3 REVENUE SHARING

Protection of intellectual property is also meant to incentivize creators of such intellectual property besides contributing to inventive fervour, knowledge enhancement, academic standards and revenue generation for IGNOU. IGNOU reserves the right to determine the share[@] (of any royalty received) of the different stakeholders (including the course writers engaged for study material development) involved in intellectual property creation and dissemination from time to time.

3.4 MODALITIES FOR COLLABORATION WITH OTHER ACADEMIC INSTITUTIONS/SOUs/DEIs REGARDING SHARING OF IGNOU MATERIAL

A. IGNOU shall partner with other academic institutions/SOUs/DEIs through written agreements to share its material for the following purposes:-

- 1) Teaching and Research
- 2) Further modifications and developments of learning materials
- 3) Hosting of IGNOU's material on Partner web-sites.
- 4) Reproduction, adaptation, translation and sale[^].

The partnership of IGNOU with other parties may entail collaborative development of learning resources for any agreed programme which in turn shall be jointly shared and would include obligations for quality check and on implementation strategies.

B. The collaboration agreements shall have the following provisions to safeguard IGNOU's interest and it shall be the duty of the concerned official to ensure inclusion of the following provisions:

- 1) Acknowledgement of the source of material as IGNOU.
- 2) To use the material provided for non-commercial purposes.
- 3) If any new IP is generated from the shared material, the ownership shall be decided as per this IP policy.

3.5 USE OF IGNOU'S TRADEMARKS AND NAME BY OTHER PARTIES

IGNOU may allow the use of its name and trademarks owned by it to another party to whom an intellectual property has been licensed through a signed agreement on the following conditions:

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@ Till IGNOU establishes its own revenue sharing norms, it may adopt practices of any reputed and premier public University / Institute.

^Given the huge IP implications, bulk sale / mass reproduction rights (to outside entities) of IGNOU learning materials shall normally not be allowed.

- (a) Intellectual property is intended to be used for the benefit of society and will be used in promoting truthful claims and information and should not mislead the society or users
- (b) Intellectual property will be used in a responsible manner in accordance with the rules of the Government / regulatory agencies.
- (c) Intellectual property shall be used without any liability to IGNOU in case of misuse of intellectual property / accidental damage accruing due to use of such intellectual property .
- (d) In no case, intellectual property will be used against the interest of India.

In all cases, the licensee has to necessarily take prior approval of IGNOU about the manner in which its name and trademarks are to be used in any media including print and electronic.

3.6 USE OF OTHER'S COPYRIGHTED MATERIALS BY IGNOU

A. Software

IGNOU expects its faculty/students/staff to understand the obligations made to third parties related to software and databases which IGNOU may be procuring for education and research purposes. Several such software packages may be having restrictions on intellectual property creation/its commercial use. Software of general use shall be procured with a valid license.

B. Other copyrighted material

Teachers, students, other employees

- (i) will respect protection offered by Indian copyright law to all copyrighted material
- (ii) would use copyrighted materials only for personal use, teaching and research purposes as permitted by Indian law, and
- (iii) would not use copyrighted material in their thesis, publications, reports and other professional documents without taking prior permission of the copyright holder.

3.7 USE OF IGNOU COURSE CONTENT AND COURSEWARE

- (a) IGNOU has the right to use and improve the course content and courseware for teaching and research at IGNOU. Without the approval of IGNOU, no employee (including employees who are no longer on roll of IGNOU), shall commercialise / use course content and course ware created, developed or used at or by IGNOU (except as at 3.2A2).
- (b) Access to educational platforms like e-Gyankosh shall be universal in read-only mode while the downloads shall be restricted to teachers of IGNOU, enrolled students (limited to their programme of study) and entities formally registered with IGNOU for such purposes.

3.8 FAIR DEALING

‘Fair dealing’ (‘Fair Use’ in some other countries) is a legal doctrine that allows limited use of copyrighted works without permission. This provision, as enshrined in the Copyright Act, offers an opportunity for educators, researchers and others to make limited use of copyrighted materials.

3.9 COMPLIANCE AND CONFLICT OF INTEREST

All inventors / creators are responsible for compliance with Government of India rules and IGNOU’s policies and ordinances related to development and use of intellectual property generated. In all activities arising out of implementation of IPR policy of IGNOU, all faculty members/inventors are expected to avoid potential and mutual conflicts of interest.

SECTION 4

ADMINISTRATION OF IPR POLICY

4.1 INTRODUCTION

Implementation of IGNOU's Intellectual Property Policy and its future amendments shall be carried out by the IP Cell formed as per the statutory provisions of IGNOU. The IP Cell shall report annually to the Academic/Research Council and Board of Management.

The IP Cell would be responsible for administering IGNOU's rights and obligations, determining inventorship and ownership, obtaining necessary legal protection and taking necessary actions to maximize the benefits of any intellectual property to the public, the creator(s) and IGNOU.

Till such time that the IP Cell comes into existence, the responsibility of IP administration may be entrusted to the Legal Cell of IGNOU.

This Section describes administrative mechanisms for some of the key activities.

4.2 POWERS TO AMEND POLICIES AND PROCEDURES

IGNOU through its Board of Management, has the full power to make changes to the IPR policy or bring out a new policy as and when it is felt necessary. This can happen in view of changes in government policies or other national and international developments

4.3 IPR COMMITTEE AND ITS Role

An IPR Committee shall be duly constituted.

The role of IPR Committee may include the following:

- (a) monitor the activities of IP Cell and take decision on the recommendations made by the cell
- (b) appraise proposals for IP protection
- (c) create procedures, forms and guidelines for implementation of IPR policy at IGNOU
- (d) appoint a panel of attorneys to facilitate registration of IPs.
- (e) assist in IPR related documentation
- (f) recommend waivers and release of IPR to Creators / Inventor(s) and/or Third party(ies) within the framework of the IPR policy

4.4 APPEAL PROCEDURE

In case of any conflict, grievance regarding ownership of intellectual property, processing of intellectual property proposals, procedures adopted for implementation of IPR policy and interpretation of various clauses of IPR policy, any aggrieved party can appeal to the IGNOU's

empowered IPR Committee to resolve the issue. In case the appellant is not satisfied with the decision of the Committee, s/he can appeal to the Vice Chancellor of IGNOU, whose decision shall be final and binding.

4.5 IP INFRINGEMENT

In case of violation/infringement of any intellectual property rights by the IGNOU faculty /students/staff/visitors or any third party infringing upon the IPR of IGNOU, the IP Cell would first investigate the matter and make recommendations to the Competent Authority through IPR Committee for resolution of such violation / infringement including need for any legal course of action.

4.6 LIABILITY AND INDEMNITY

IGNOU shall, in any contract between the itself and the licensee, seek indemnity from any legal proceedings including this, but not limited to manufacturing defects, production problems, design guarantee, up-gradation and debugging obligations. IGNOU shall also ensure that its employees are covered by an indemnity clause built into the agreements with licensee(s) while transferring technology or copyrighted material to licensees.

4.7 JURISDICTION

As a policy, all agreements to be signed by IGNOU will have the jurisdiction of the courts in New Delhi, India and shall be governed by appropriate laws in India.

4.8 RECORD KEEPING

All records of IP filings, registrations, IPR Committee meetings, any and all amendments of IP Policy shall be maintained electronically as well as in hard copies.
