Intellectual Property Rights

INTELLECTUAL PROPERTY (IP) refers to creations of the mind, such as inventions, original literary and artistic works, designs and symbols, names and images used in commerce. Intellectual property rights (IPRs) are legally recognised exclusive rights to IP. Common types of IPRs include patents, copyrights, industrial design rights, trademarks, trade dress and trade secrets.

Intellectual property can be complex, and is often viewed as a specialised field. IP can also be highly valuable, enabling people to earn recognition or financial benefit from what they invent or create. It is important that this area is directly engaged with,
as deciding how ownership of the inputs and outputs of collaborative research are most fairly distributed is critical for a solid, successful partnership. The risks and benefits for all parties with respect to the available IPRs needs to be addressed up front in the formal contract, to avoid conflict downstream.

All partners should therefore ensure that they have a level of awareness about IP and IPRs in general, and how they relate to the specific research proposal at hand. If at all possible, the advice of an external expert should be sought concerning contractual terms that relate to IPRs.

KEY QUESTIONS TO CONSIDER

☐ What legislation and policies will influence how the IP is managed (for example, if your partnership is cross-country, whose national legislation will govern the protection and enforcement of the IPRs) and are there any international laws and treaties that your country subscribes to that will aid the enforcement and protection of the IPRs where there is no national legislation to assist?

☐ Have you considered which jurisdictions the IPRs should be protected in? (IPRs are jurisdictional in nature)

☐ Has the nature and purpose of the research been identified and described?

☐ Have the interests of all parties been discussed upfront, such as the acquisition of IPRs, benefit sharing and the risks associated with IP?

☐ Is there any existing IP (background IP), anticipated IP (foreground) or new unanticipated IP (side ground) coming from the project? How will these be disclosed, if necessary, discussed and rights agreed?

☐ Has ensuring equitable downstream access to the outputs of the research endeavour been discussed?

☐ Have you familiarised yourself with a template contract, and identified the kinds of terms which will be negotiated?

☐ Have you discussed who will own the various types of IP, including the possibility of exclusive ownership with a royalty-free license?

☐ How will the various types of IP be protected (i.e. will there be rights and responsibilities inferred over owners of the IP)? Who is responsible for securing protection, maintenance of rights (payments of annuities) and enforcement of rights?

☐ Are there cost implications for the acquisition and protection of IPRs and who will be responsible for covering these costs?

☐ What mechanisms (for example, availability of technology transfer office, research or legal offices) are needed to manage all aspects relating to IP (such as dispute resolution procedures described in the contract in the instance where a dispute over IP arises)?
The Donald Danforth Plant Science Center (Danforth Center) is a not-for-profit research institute with a global vision to improve the human condition through plant science. Their best practice model is based on respect for protection of IPRs, inter-institutional and international collaborations and scientific partnerships. Their philosophy, entrenched in their overall mission, is not to infringe or misuse the IPRs or materials entrusted to them. This is evidenced in the way they draft agreements.

WHERE TO GO FOR ADDITIONAL HELP

- Lambert Toolkit for university-industry collaboration: http://www.wipo.gov.uk/lambert

See also [http://www.cohred.org/FRC](http://www.cohred.org/FRC) where you will find a useful guidance tool on developing and implementing guidance on research contracting, entitled: Where there is no lawyer: Guidance for fairer contract negotiation in collaborative research partnerships.