

## Intellectual Property Policy and Procedures

	<b>This policy is effective from</b>	<u>May 2009</u>
<b>Approval body</b>	<u>Academic Council</u>	<b>Approval date</b> <u>May 2009</u>
<b>Owner</b>	<u>Head of Academic Affairs</u>	<b>Next review date</b> <u>June 2018</u>

### 1. Purpose

- 1.1. The purpose of this policy is to set out the principles relating to the ownership and exploitation of all Intellectual Property arising from design and artistic academic activities within NCAD. The policy is intended to support the protection and exploitation of NCAD IP for the benefit of society whilst at the same time recognising and rewarding the originator(s) of the IP, NCAD itself and any sponsor to the work which led to the creation of the IP.
- 1.2. IP rights are a matter of concern to NCAD because it is an educational institution that is fostering those who will develop into inventors, designers and creative artists, and employs persons who are already inventors, designers and creative artists.
- 1.3. Currently NCAD students and staff are working with companies in assisting with the design of artefacts, which may give rise to significant opportunities for IP rights to arise, and opportunities for the commercial development of the products that are created and developed.
- 1.4. As the college becomes more deeply involved in postgraduate research there is a need to have the outcomes of this activity protected. In order to obtain research funding from industry state and EU agencies the college is obligated to implement transparent IP policies and procedures.
- 1.5. The advent of GradCAM (Graduate School of Creative arts and Media) and other such research collaborations with partner institutions and industries will increasingly highlight issues of IP ownership.
- 1.6. Furthermore, NCAD is a member of a consortium named Liberty, formed to operate the National Digital Research Centre (NDRC). As part of this membership, NCAD has agreed that an IP right developed within the consortium belongs to the consortium, with resulting income being ultimately returned to NCAD.
- 1.7. In addition, An Bord of NCAD is required by the Higher Education Authority (HEA) to have a policy on IP in line with the Forfás National Code 2004, if An Bord wishes to seek funding from the HEA, which in turn may entail collaboration with Universities or Institutes of Technology. The HEA's concern is to ensure that when it funds research in design, the results of the research will be available to benefit the State through commercial applications.

<b>Doc version</b>	<b>Approval date</b>	<b>Modified by</b>	<b>Summary of modifications</b>
V2	May 2009	Kilian O'Callaghan	Updated template, same content

## 2. Definitions

- 2.1. **Intellectual Property (IP)** means all intellectual property rights including patents, trademarks, service marks, design rights, database rights, copyright, moral rights (whether registered or not), inventions, know how, trade secrets, confidential information, together with any goodwill attaching thereto, as well as any similar rights which may come into existence in the future anywhere in the world.
- 2.2. IP includes but is not limited to, two or three dimensional works of art, visual images, text, multi-media works, graphics, digital images, videos, audio recordings, films, slides, photographic images, construction materials.

## 3. Policy for NCAD on IP rights

### Staff

- 3.1. Where any invention, design or artistic creation has been created in the course of a person's employment with NCAD, then the IP rights are the property of and vest solely and absolutely in NCAD, except:-
  - 3.1.1. Where NCAD staff contribute to developments undertaken at or through Liberty. In such instances, IP rights are owned by Liberty, with an ultimate return to NCAD or
  - 3.1.2. By special agreement of the IP committee where the college enters into a contract agreement with a partner or industrial collaborator.

### Students

- 3.2. Where any invention, design or artistic creation has been created in the course of a person's studies with NCAD as a student, whether full-time, part-time, undergraduate or post-graduate, then the IP rights are the property of and vest solely and absolutely in NCAD, except:-
  - 3.2.1. Where NCAD students contribute to developments undertaken at or through Liberty. In such instances, IP rights are owned by Liberty, with an ultimate return to NCAD.
  - 3.2.2. By special agreement of the IP committee where the college enters into a contract agreement with a partner or industrial collaborator.

## 4. Exercise of ownership rights

- 4.1. NCAD will only seek to exercise its ownership rights where an aesthetic creation has been reproduced five or more times. Roles and responsibilities

## 5. Intellectual Property Committee

- 5.1. An IP Committee shall be set up to decide upon IP issues referred to it under this policy. The IP committee shall be responsible for supporting the development and

commercialisation of NCAD IP. All IP created by staff or students must be disclosed to the committee in accordance with the procedures laid down in this IP policy.

- 5.2. The IP Committee shall consist of:
  - 5.2.1. Committee chair
  - 5.2.2. Industry Liaison Officer
  - 5.2.3. Three academic staff member
  - 5.2.4. External expert (when required)
  - 5.2.5. Members to be appointed by the Director
- 5.3. The IP Committee members will be required to sign a confidentiality agreement regarding proposals submitted and regarding the IP produced at NCAD and presented to the IP committee.
- 5.4. The relevant originator(s) of the IP or the relevant supervisor may be required to put forward a proposal to the IP committee regarding the IP on a project and may be requested to attend a committee meeting, where appropriate.
- 5.5. The importance of appropriate outside professional assistance is acknowledged. The IP committee and the Industry Liaison Officer will avail of these resources when appropriate.
- 5.6. Role of the IP Committee:
  - 5.6.1. Processing of IP applications
  - 5.6.2. Determining if NCAD will support the IP application financially.
  - 5.6.3. Seeking advice in relation to protection of the IP.
  - 5.6.4. Appointing a nominee to negotiate with third parties to commercialise the IP.
  - 5.6.5. Approving IP agreements negotiated between the nominee and third parties.

## **6. Administration of the IP policy notification procedure**

- 6.1. It is a condition of all employment or engagement by NCAD as staff, or enrolment by NCAD as a student, that the results of all development projects are fully and promptly notified to the IP committee or the Industry Liaison Officer. Staff and students in the college must notify the IP committee or the Industry Liaison Officer of any original work suitable for volume production (five or more times) as soon as reasonably practical after its creation. No public disclosure of the original work should be made until the IP Committee have considered it.
- 6.2. Staff and students must also notify NCAD when an original work is about to be reproduced five or more times. All such notifications should be made to the IP committee or the Industry Liaison Officer, as soon as reasonably practical before reproduction.

## 7. Disclosure

- 7.1. It is important to recognise that premature disclosure of an invention or a design will prevent valid IP protection in most countries. Disclosure is defined as ‘everything made available to the public by means of written or oral description, by use or in any other way’. Therefore, before speaking to a third party about the development or commercialisation of any original work, staff and students must notify the IP Committee of the matters to be disclosed. For the avoidance of doubt, any exhibition of work and the end of year degree show constitutes a public disclosure.

## 8. PROCEDURES TO BE FOLLOWED IN RESPECT OF IP PROTECTION APPLICATIONS

- 8.1. Any artistic creation, invention or design or other intellectual property capable of commercialisation must be notified to the IP committee or the Industry Liaison Officer on an IP Disclosure Form.
- 8.2. The IP committee will assess the commercialisation potential of the IP and advise NCAD of its view on suitability for support and protection.
- 8.3. The IP committee may seek advice from professional advisors, should the need arise.
- 8.4. The IP committee shall advise the originator(s) of the IP within a maximum of 60 days of their decision.
- 8.5. If the IP committee decide not to support the IP, they may offer the originator(s) the opportunity to exploit the IP independently of NCAD, under agreed written terms.
- 8.6. Where a decision is made to seek IP protection and commercialise the IP, the originator(s) of the IP is required to co-operate fully in the process.
- 8.7. At any time, NCAD may decide to discontinue protection and commercialisation of the IP and may offer the originator(s) the opportunity to exploit the IP independently of NCAD, under agreed written terms.

## 9. General provisions of IP policy

- 9.1. Any IP rights in or to any material/works created by staff in the course of their employment or students in the course of their studies, with NCAD, is the property of and vests solely and absolutely in NCAD. Such material/works include, but are not limited to any:
  - 9.1.1. copyright (including rights in computer software and moral rights)
  - 9.1.2. patents
  - 9.1.3. design rights
  - 9.1.4. trademark rights
  - 9.1.5. brand rights
  - 9.1.6. database rights
  - 9.1.7. know how

- 9.1.8. trade secrets
- 9.1.9. confidential information
- 9.1.10. any other IP right
- 9.2. This applies to any IP which is developed by staff or students:
  - 9.2.1. during the working, teaching or research hours at NCAD; or
  - 9.2.2. using NCAD'S equipment, supplies, facilities or resources or NCAD'S premises.
  - 9.2.3. using NCAD'S confidential information, trade secrets, know how or any NCAD IP; or
  - 9.2.4. in relation to any work carried out under third party funded development programmes.
  - 9.2.5. Staff and students agree at any later time to execute any documentation or otherwise provide assistance to NCAD to secure, protect, perfect or enforce any rights, title and interests in and to NCAD IP.

## **10. Intellectual property assignments and patent assignments**

- 10.1. By virtue of their employment by NCAD, each staff member shall comply with this IP policy and shall agree to assign to NCAD or its nominee any and all IP created in the course of their employment with NCAD.
- 10.2. By virtue of their enrolment by NCAD, each student shall comply with this IP policy and shall agree to assign to NCAD or its nominee any and all IP created in the course of their employment with NCAD.
- 10.3. When required by the specific circumstances of a project, and on the request of the IP committee, the originator(s) of the IP will agree:
  - 10.3.1. to sign an Intellectual Property Assignment Agreement
  - 10.3.2. to execute such documents of assignment or other documentation required to assign or transfer, all the right, title and interest, in the IP and any moral rights to ensure, protect, perfect and enforce NCAD'S right, title, and interest in NCAD'S IP
  - 10.3.3. to do anything that may reasonably be required to permit and enable any assignee of any patent, design or trademark application or other IP to apply for and obtain the grant of its IP rights, to protect and maintain its rights, title and interest in same, and
  - 10.3.4. to execute and do all such documents, acts and things as may be reasonably required from time to time for the purpose of giving each part the full benefit of the provisions of this IP policy.

## **11. Research financed by third parties**

- 11.1. Any research which is wholly or partly financed by a third party agency shall be subject to the specific provisions of the grant or contract covering that research. In the event of

any inconsistency between this IP policy and the terms of any such grant or contract then the provisions of the said grant or contract shall prevail provided that the IP clauses in such grant or contract have been reviewed by the IP committee and, in the case of a contract, such contract has been properly executed by NCAD.

## **12. Consultancy**

12.1. Staff who participate in consultancy projects for third parties must have such consultancy contracts approved by the IP committee, who will consider and advise on IP ownership.

## **13. Commercialisation**

13.1. The IP Committee or the Industry Liaison Officer will assist, provide advice, or procure the provision of outside professional advice in relation to the various options for IP protection, commercialisation and technology transfer that may be appropriate in order to best meet the requirements of this IP policy and provide maximum benefit to NCAD.

## **14. IP fund**

14.1. An Bord will establish a fund which will assist staff and students to seek IP protection for the outcome of appropriate projects with commercial potential. The fund will also be used to assess, protect and commercialise IP by obtaining IP protection, the granting of licences as determined by the IP committee.

## **15. Division of income: general principles**

15.1. Each application for IP assistance will be considered individually and will involve an assessment of all potential risks and potential rewards.

15.1.1. The definition of “income” includes revenue derived from the relevant patents, registered designs or any other IP in question, which are commercialised by NCAD, and also includes (without limitation) up-front licence fees, down payments, minimum annual payments, royalties on sales and is net of any expenses incurred by the NCAD in commercialising or protecting the relevant patents or other NCAD IP.

15.1.2. All direct expenses incurred by NCAD in:

- the registration or protection of IP; and
- the commercialisation of a design, invention or any other IP; including (without limitation) administrative, licensing, legal, and any other expenses and costs and any subsequent investigation, development and promotion, will be deducted from the initial royalty income or lump sum. No royalty income will be made available for distribution until such expenses have been recovered.

15.1.3. Unless agreed otherwise between joint originators of the IP, each originator’s share set out herein shall be divided equally among them.

15.1.4. The originator(s) of the IP shall continue to share the income though he/she may no longer be employed by NCAD.

## 16. Division of income

16.1. Income derived from industrial designs, inventions or other IP which are protected and commercialised by NCAD in accordance with the provisions of this IP policy will be distributed as follows:

Level of Income	Inventor(s)	NCAD Fund
First €50,000 of royalties	25-50% 75%	50-75% 25%
Over €50,000 of royalties	25-40% 60%	60-75% 40%

Level if income derived from non- patented IP	Author/Creator	NCAD Fund
First €50,000 of income	10-50% 75%	25-45% 25%
Over €50,000 of income	10-35% 60%	30-50% 40%

16.2. The NCAD Fund will seek to recover the costs incurred in patenting and protection. Over and above these costs the NCAD Fund will share royalties with the Academic department in which the original work was created.

16.3. For the avoidance of doubt, NCAD makes no claim to academic book royalties or any income arising from authoring any academic articles or publications by staff.

## 17. Intellectual property created outside NCAD employment or studentship

17.1. NCAD will have no interest in any designs, inventions or other IP created by NCAD staff or students entirely on their own time without the use of any NCAD facilities. The onus shall be on staff and students asserting their rights under this paragraph to prove to the satisfaction of the IP committee that the relevant IP was, in fact, created by them on their own time without the use of any NCAD facilities.

## 18. Publication of research results

18.1. NCAD encourages staff and students to place the results of their creative activities in the public domain either through publication, presentations, or exhibitions. It is mandatory that such disclosure is not in violation of the terms of this IP Policy, or of any agreement that has been entered into by NCAD with a sponsor or third party.

18.2. Premature publication or disclosure except on a confidential basis may make it impossible to obtain valid IP protection. A delay in publication to enable an IP application to be filed should be for such period as is reasonably determined by the IP committee to ensure protection of the IP. The placing of a thesis or samples of work in the NCAD library, or the exhibition of works within NCAD, without ensuring that accessibility is restricted constitutes publication.

## **19. Arbitration**

- 19.1. Any dispute between NCAD and the originator(s) of IP will be forwarded to an independent arbitrator to be agreed by the parties. Failing agreement, an arbitrator will be appointed by the President for the time being of the Law Society of Ireland. Expenses incurred in arbitration shall be deducted from royalty income before distribution.

## **20. Monitoring and evaluation of policy**

- 20.1. This IP policy will be monitored by the IP committee. The IP policy and related research, project development, commercialisation and technology transfer will be monitored and evaluated on an annual basis and may be extended by NCAD from time to time. All amendments to this IP Policy shall be notified to NCAD staff and students by issuing an updated IP policy and procedures document, and via the NCAD website, and such amendments shall be fully valid and effective from the date of notification.

## **21. Version history**

- 21.1. Previous document approved May 2009.
- 21.2. This document is the same content in a new template.