

Intellectual Property

Policy and Procedures for Staff

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V2	May 2009	Kilian O'Callaghan	Updated template, same content
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1 Introduction

The National College of Art and Design (NCAD) recognises that Ireland’s research and innovation strategy promotes close working relationships between industry and the public research system. NCAD is committed to facilitating access by industry to the research conducted at NCAD. An aim of this Intellectual Property Policy is to encourage the use and commercialisation of Intellectual Property created as a result of research conducted at, by, or on behalf of NCAD; by addressing the practical arrangements of how NCAD deals with any Intellectual Property created as a result of NCAD - or State-funded research; and how NCAD deals with any Intellectual Property created as a result of collaborative research conducted at NCAD.

A 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 research and activities within NCAD. This Intellectual Property Policy is intended to support the protection and exploitation of such Intellectual Property for the benefit of society, whilst at the same time recognising and rewarding the creator(s) of the Intellectual Property, NCAD itself, and any third party contributor to the work which led to the creation of the Intellectual Property.

Intellectual Property 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.

Currently, employees of NCAD are working with industry in assisting with the design of artefacts, which may give rise to significant opportunities for the creation of Intellectual Property, and opportunities for the commercial development of the products that are created and developed.

As NCAD becomes more deeply involved in 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; NCAD is obligated to implement transparent Intellectual Property policies and procedures.

In addition, An Bord of NCAD is required by the Higher Education Authority (HEA) to have an Intellectual Property Policy 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.

2 Definitions

In this Intellectual Property Policy, unless the context requires otherwise or unless otherwise specified, the following words shall have the following meanings:

NCAD	The National College of Art & Design of 100 Thomas Street, Dublin D08 K521, Ireland.
Intellectual Property (IP)	Inventions, computer software, data, databases, technical know-how and trade secrets. Large banks of new data collected in the course of research are also covered here only if they may reasonably be considered to have potential for exploitation. This policy does not include IP in teaching materials, books or learned articles, artistic or musical works, sound recordings, films or broadcasts, trademarks and unregistered design rights (all of which are

	regarded in this Policy as 'creative works') except to the extent that any creative works form part of NCAD know-how.
NCAD-funded Research	NCAD has paid 100% of the costs of the research.
State-funded Research	A State research funding organisation has paid 100% of the costs of the research.
Third party-funded Research	A third party has paid 100% of the costs of the research conducted by NCAD.
Part-funded Research	NCAD or a State research funding organisation has paid part of the costs of the research; and a third party has part of the costs of the research conducted by NCAD.

3 Ownership of Intellectual Property

3.1 General

Any Intellectual Property created as a result of NCAD-funded Research and/or State-funded Research shall belong to NCAD.

Any Intellectual Property created as a result of Third party-funded Research and/or Part-funded Research conducted at, by, or on behalf of NCAD shall belong to NCAD unless an exemption is requested or negotiated.

Any Intellectual Property created as a result of using any equipment, supplies, facilities or assets of NCAD shall belong to NCAD unless an exemption is requested or negotiated.

Any intellectual property created as a result of using any confidential information, trade secret, know how, or any of the Intellectual Property of NCAD shall belong to NCAD.

NCAD will have no interest in any Intellectual Property created by an employee of NCAD entirely on their own time without the use of any equipment, supplies, facilities or assets of NCAD, or without the use of any confidential information, trade secret, know how, or any of the Intellectual Property of NCAD. The onus shall be on any employee of NCAD asserting their rights under this paragraph to prove to the satisfaction of the IP Committee that the relevant Intellectual Property was, in fact, created by them on their own time without the use of any equipment, supplies, facilities or assets of NCAD, or without the use of any confidential information, trade secret, know how, or any of the Intellectual Property of NCAD.

3.2 Staff/Employees

Any Intellectual Property created in the course of the normal duties, or any specifically assigned duties, of an employee of NCAD shall belong to NCAD unless an exemption is requested or negotiated.

The employee agrees with NCAD to assign and transfer unto NCAD all right, title, and interest of the employee in and to the Intellectual Property, and all rights and powers to apply for registration or protection of the Intellectual Property anywhere in the world in the name of NCAD.

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The employee will give such assistance to NCAD and/or to any licensee or assignee in respect of the Intellectual Property as is reasonably necessary to enable NCAD, the licensee, and/or the assignee to properly use and commercialise the Intellectual Property in accordance with any terms and conditions agreed between the parties.

Any and all Intellectual Property created by an employee of NCAD must be disclosed to the IP Committee in accordance with the procedures laid down in this IP Policy.

The employee, and/or the relevant supervisor, may be required to submit a proposal to the IP Committee regarding the IP created and may be requested to attend a committee meeting, where appropriate.

3.3 Consultancy

Any full-time employee of NCAD who participates in paid consultancy, or consultancy that has a commercial value, for any third party must have such consultancy approved by the IP Committee, who will consider and advise on IP ownership.

Part-time employees of NCAD, who through their employment with NCAD, participates in paid consultancy, or consultancy that has a commercial value, for any third party must have such consultancy approved by the IP Committee, who will consider and advise on IP ownership.

Please note that consultancy does not include IP in teaching materials, books or learned articles, artistic or musical works, sound recordings, films or broadcasts, trademarks and unregistered design rights (all of which are regarded in this Policy as 'creative works') except to the extent that any creative works form part of NCAD know-how.

3.4 Exercise of ownership rights

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

4 Intellectual Property Committee

An Intellectual Property committee (the IP Committee) shall be established to decide upon Intellectual Property issues referred to it under this IP Policy. The IP Committee shall be responsible for supporting the development and commercialisation of Intellectual Property created as a result of research conducted at, by, or on behalf of NCAD.

The role of the IP Committee includes, but is not limited to:

- a) processing of any and all Intellectual Property disclosed to the IP Committee;
- b) determining whether NCAD will financially support the registration or protection of the Intellectual Property;
- c) seeking advice in relation to registration or protection of the Intellectual Property;
- d) appointing a nominee to negotiate with third parties to commercialise the Intellectual Property; and
- e) approving Intellectual Property agreements negotiated between NCAD, the nominee, and any third party.

The IP Committee shall comprise:

- a) Committee Chair – Head of NCAD Research
- b) Head of Innovation & Engagement
- c) three academic staff members
- d) an external expert (when required)

Any and all Intellectual Property created by an employee of NCAD must be disclosed to the IP Committee in accordance with the procedures laid down in this IP Policy.

The IP Committee members may be required to sign a confidentiality agreement regarding proposals submitted and regarding the Intellectual Property disclosed to the IP Committee.

The employee may be required to put forward a proposal to the IP Committee regarding the Intellectual Property disclosed and may be requested to attend a committee meeting, where appropriate.

The importance of appropriate outside professional assistance is acknowledged. The IP Committee will avail of these resources, where appropriate.

5 Intellectual Property disclosure procedure

Through the Head of Research, all employees of NCAD must disclose to the IP Committee any and all Intellectual Property created in the course of the normal duties or any specifically assigned duties of an employee of NCAD. NCAD staff disclosing intellectual property are required to submit an NCAD Invention Disclosure Form to the IP Committee through the Head of Research.

Through the Head of Research, using an NCAD Invention Disclosure Form, any third party must disclose to the IP Committee any and all Intellectual Property created as a result of Third party-funded Research and/or Part-funded Research.

The disclosure to the IP Committee of the Intellectual Property created should be made in writing.

Through the Head of Research, the disclosure to the IP Committee of the Intellectual Property created should be made as soon as practically possible following the creation of the Intellectual Property.

Through the Head of Research, the disclosure to the IP Committee of the Intellectual Property created should be signed and dated by the employee and/or the relevant supervisor, or the third party.

Through the Head of Research, the IP Committee will evaluate all intellectual property submissions before determining approval or non-approval.

6 Disclosure/Publication

It is important to recognise that premature disclosure of the details of any Intellectual Property could invalidate the registration or protection of that Intellectual Property, or could prevent the value and benefit of the Intellectual Property from being maximised.

Disclosure includes *everything made available to the public by means of written or oral description, by use or in any other way*. For the avoidance of doubt, any exhibition of work, including any form of online publication, placing of a research material or samples of work in the NCAD library, publication of results, oral discussion, or display constitutes a public disclosure.

No public disclosure of the details of any Intellectual Property shall be made until authorised by the IP Committee.

NCAD shall be free to publish any results of any NCAD-funded Research and/or State-funded Research, subject to compliance to this IP Policy, or by special agreement of the IP Committee.

NCAD shall be free to publish any results of any Third party-funded Research, subject to compliance to this IP Policy, or by special agreement of the IP Committee; and in agreement with the third party.

NCAD or the third party shall be free to publish any results of any Part-funded Research, subject to compliance to this IP Policy, or by special agreement of the IP Committee; and in agreement with the third party.

Any party intending to publish any results of any Part-funded Research or any Third party-funded Research shall submit the proposed publication to the other party before submitting it for publication, and in accordance with this IP Policy.

Review times will be 30 calendar days from submission of the proposed publication to the other party, during which period either party may object in writing to the publication. In this event, the objecting party may withhold permission to publish for up to 90 calendar days from the date the proposed publication was submitted to them or until any relevant Intellectual Property is registered or protected to the satisfaction of the parties, whichever occurs first.

If no written objection is received by the party intending to publish within the 30 calendar days, then permission to publish shall be deemed to have been given.

7 Intellectual Property protection procedure

Through the Head of Research, all employees of NCAD must disclose to the IP Committee any and all Intellectual Property created in the course of the normal duties or any specifically assigned duties of an employee of NCAD, in accordance with the Intellectual Property disclosure procedure of this IP Policy.

Through the Head of Research, any third party must disclose to the IP Committee any and all Intellectual Property created as a result of Third party-funded Research and/or Part-funded Research; in accordance with the Intellectual Property disclosure procedure of this IP Policy.

The IP Committee will consider the commercial value of any and all Intellectual Property disclosed to the IP Committee; and determine whether NCAD will financially support the registration or protection of the Intellectual Property.

Where appropriate, the IP Committee will seek advice in relation to registration or protection of the Intellectual Property.

Where NCAD will financially support the registration or protection of the Intellectual Property, the IP Committee will inform the employee, or the third party within 60 calendar days from disclosure of

the Intellectual Property to the IP Committee; and NCAD will take necessary steps to register or protect any relevant Intellectual Property in the name of NCAD.

Where NCAD will not financially support the registration or protection of the Intellectual Property, the IP Committee will inform the employee, or the third party within 60 calendar days from disclosure of the Intellectual Property to the IP Committee; and the employee, or the third party shall have a right to take necessary steps to register or protect any relevant Intellectual Property in the name of NCAD.

Where NCAD will discontinue the registration or protection of the Intellectual Property, the IP Committee will inform the employee, or the third party within 60 calendar days from the decision to discontinue the registration or protection of the Intellectual Property; and the employee, or the third party shall have a right to negotiate the further registration or protection of the Intellectual Property with the IP Committee.

8 Collaborative Research

In the case of any Third party-funded Research or Part-funded Research, a Collaborative Research Agreement shall be negotiated and signed by both NCAD and the third party prior to commencement of the research.

The Collaborative Research Agreement should be consistent to the objectives of the IP Policy and include terms and conditions relating to:

- a) details of the research and who will conduct it;
- b) mechanisms for the identification and protection of Intellectual Property developed during the research;
- c) management of Intellectual Property, including payment of associated costs;
- d) licensing and/or assignment of any Intellectual Property created as a result of the research;
- e) licensing of any Intellectual Property created prior to the research;
- f) disclosure of any results of the research results; and/or
- g) management and oversight of the research.

Prior to negotiating a Collaborative Research Agreement, the parties may negotiate and agree a non-binding term sheet that defines the core terms relating to the research, and upon which the Collaborative Research Agreement will be based.

Where any Intellectual Property owned by NCAD is required for the commercialisation of Intellectual Property created as a result of the Third party-funded Research or Part-funded Research, the third party shall have a right to negotiate a non-exclusive licence to the Intellectual Property owned by NCAD that is required for the commercialisation of Intellectual Property created as a result of the Third party-funded Research or Part-funded Research.

The non-exclusive licence to the Intellectual Property owned by NCAD will only be for the purposes of, and to the extent required to, commercialise the Intellectual Property created as a result of the Third party-funded Research or Part-funded Research.

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The non-exclusive licence to the Intellectual Property owned by NCAD will be on such terms and conditions as would be found in a usual arm's length commercial licence, and in agreement between NCAD and the third party.

The third party may have a right to negotiate an exclusive licence to the Intellectual Property owned by NCAD that is required for the commercialisation of Intellectual Property created as a result of the Third party-funded Research or Part-funded Research by special agreement of the IP Committee, and subject to compliance with any legal obligations including EU State Aid obligations.

An exclusive licence to the Intellectual Property owned by NCAD will only be granted where:

- a) the licensee can reasonably demonstrate to the satisfaction of NCAD that an exclusive licence is essential for the licensee to properly commercialise the Intellectual Property;
- b) NCAD is satisfied that the exclusive nature of the licence will not restrict its ability to continue its teaching, research and commercialisation activities;
- c) the know-how, research tools and other broad enabling technologies are described in such detail and manner as would allow NCAD to ensure compliance with the exclusive licence; and/or
- d) by special agreement of the IP Committee.

Any licences to the Intellectual Property owned by NCAD shall be granted by NCAD to the third party subject to the third party making at least the minimum contribution to the cost of the research, where the minimum contribution is determined by the State research funding organisation.

The parties should each appoint a single point of contact to ensure day-to-day adherence to the direction and scope of the research. This governance arrangement should be set out in the Collaborative Research Agreement.

9 Commercialisation

The Head of Innovation & Engagement, or the Industry Liaison Officer will assist, provide advice, or procure the provision of outside professional advice in relation to the various options for Intellectual Property 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.

Access to any Intellectual Property owned by NCAD shall be by the granting of a licence on fair commercial terms by NCAD to a third party on an exclusive or non-exclusive basis; and in agreement with the third party.

In the absence of the granting of a licence, NCAD shall be free to negotiate arrangements for another third party to access the Intellectual Property created as a result of the research.

NCAD, any employee of NCAD shall not be restricted from conducting any future research in the same area as that of the research, provided that they comply at all times with the provisions of the Collaborative Research Agreement and this IP Policy.

The third party shall pursue commercialisation of the Intellectual Property owned by NCAD in a timely manner; and in agreement with NCAD.

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The third party shall acknowledge and agree that NCAD shall be free to use the Intellectual Property owned by NCAD to continue research and teaching in any field covered by the licence.

NCAD may agree to transfer or assign ownership of any Intellectual Property owned by NCAD by special agreement of the IP Committee, and subject to compliance with any legal obligations including EU State Aid obligations.

Any transfer or assignment of ownership of any Intellectual Property owned by NCAD shall be subject to the transfer or assignment being consistent to the objectives of this IP Policy.

In the case of any Third party-funded Research, the third party will be entitled to a Non-Exclusive Royalty-Free (NERF) licence, an exclusive licence, or a transfer or assignment of any Intellectual Property created in the course of the research.

10 Division of income

Any determination of whether NCAD will financially support the registration or protection of the Intellectual Property will be considered individually and will involve an assessment of all potential risks and potential rewards.

Income includes revenue derived from the commercialisation of the relevant Intellectual Property and includes (without limitation) up-front licence fees, down payments, minimum annual payments, royalties on sales and is net of any expenses incurred by NCAD in commercialising or protecting the relevant Intellectual Property.

Any and all expenses incurred by NCAD in: the registration or protection of Intellectual Property; and the commercialisation of Intellectual Property; including (without limitation) administrative, licensing, legal, and any other expenses and costs and any subsequent investigation, development and promotion, will be deducted from any initial royalty or lump sum payment. No income will be made available for distribution until such expenses have been recovered by NCAD.

Income derived from Intellectual Property owned 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%)

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 employees or students of NCAD.

11 Conflict of Interest

It is assumed that all NCAD staff or other persons representing participating institutions in establishing and administering collaborative arrangements do so as salaried employees or unremunerated agents and will not receive personal gain or benefit as a result of the arrangements. Should any persons involved have such a personal interest, this should be clearly declared to the NCAD IP Committee prior to any arrangement being negotiated, so that NCAD can determine whether there might be any conflict of interest.

12 Arbitration

Any dispute between NCAD, or any third party, 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.

13 Monitoring and evaluation of policy

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 employees of NCAD 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.