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UFV 2020/943

# Guidelines for intellectual property created at Uppsala University

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Approved by the Vice-Chancellor on 21 June 2022

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## Introduction

These guidelines aim to compile and establish principles for how Uppsala University (UU) is to manage intellectual property (IP)<sup>1</sup>. The intention is for these guidelines to also fulfil the European Commission's Code of Practice (2008/416/EG).

According to the Higher Education Act, the main task of universities and higher education institutions is to conduct teaching and research, collaborate with the wider community and take action to ensure that the results of research are put to good use.

In an academic environment, intellectual creativity, the sharing of ideas and openness are all core values. The aim is always to increase the level of knowledge and to disseminate it. The creation of IP is a natural result of work conducted in the academic environment, and UU wants to ensure that both its interests and those of employees are safeguarded while striving for openness and continuous sharing of knowledge.

In these guidelines, IP refers to intellectual property rights as defined in relevant Swedish law. Intellectual property rights include, for example, copyright (literary works, texts, visual art, sculptures, music), their closely associated rights (computer programs, catalogues, photos), patents (inventions) and patterns (design). Where relevant, trade secrets (know-how) may also be deemed to be covered by the guidelines.

For more information regarding intellectual property, we refer you to the website of the Swedish Intellectual Property Office ([www.prv.se/en/](http://www.prv.se/en/)) or to the innovation support unit, UU Innovation (<https://www.uuinnovation.uu.se/>).

## 1. Ownership

At UU, the general rule is that rights to IP created as part of a task that primarily comprises research accrues to the author/inventor. The author/inventor could either be a student or an employee of UU. Where an author/inventor is employed at UU, the rights accrue to the employee unless otherwise agreed. This is a result partly of the 'professor's privilege'<sup>2</sup> and partly of the expanded interpretation of this exemption to include more than just patentable inventions, which follows from standard practice at UU.

Intellectual property rights refer to the intangible part of a result, not the physical specimens involved. Physical specimens produced within the framework of employment at Uppsala University are not covered by this guideline but are handled in accordance with general legal principles. For example, notes of measurement data, computer files and saved computer programs or databases are regarded as physical specimens.

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<sup>1</sup> The English term 'Intellectual Property', abbreviated to 'IP', is the corresponding term for the Swedish 'immateriella tillgångar'. 'IP' is also the recognised abbreviation for 'immateriella tillgångar' in Sweden.

<sup>2</sup> 'Professor's privilege', see Act on the Right to Employees' Inventions (1949:345), Section 1.

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UU has no ownership of students' IP, unless agreed otherwise.

## 2. Right of use

To enable UU to fulfil its mission and ensure that staff at UU are not prevented from conducting teaching and research as part of that mission, it is important that new knowledge can be exploited continuously in UU's activities. New knowledge may take the form of IP. The following section describes UU's right to make use of IP produced as part of UU's activities.

### 2.1 Rule of thumb

If a copyrighted work has arisen as a result of the employee performing their duties or as a result of a special assignment or an explicit instruction, the employer may use such works for its normal activities and to the extent and for the purposes that could be foreseen when the work was created. The employer only has the right to change the work to a limited extent and does not have any right to transfer or assign rights to the work. This is typically known as the rule of thumb.

According to this rule, the employee is not entitled to additional remuneration for the employer's use beyond the salary which the employee received from the employer during their employment.

It can be noted that if an author implements IP in their research activities at UU and another person is dependent on this IP to be able to conduct their research, it may be deemed that the author has in practice granted a licence to UU to continue to use this IP for the benefit of the person dependent on said IP.

### 2.2 Computer programs

Section 40 a of the Copyright Act states that the copyright for a computer program created by an employee as part of their duties or upon instruction from the employer is transferred to the employer. However, the employer (Uppsala University) only claims the right to use computer programs that have emerged as part of research or teaching. Such right of use includes the use, modification and copying of the program for the University's own activities.

The provisions above are applicable unless agreed otherwise.

### 2.3 Teaching materials

Teaching material refers here to IP that is produced by an employee within the framework of their position's teaching duties. Unless agreed otherwise, the IP in the teaching material accrues to the author. UU has the right to use teaching materials in accordance with the rule of thumb (see section 2.1) but shall not use teaching materials that are out of date in relation to the state of current knowledge or that otherwise do not correspond to accepted standards for teaching materials at Swedish universities.

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## 2.4 Decision-making powers

Decisions on an individual case in which UU waives all or part of its rights to an employee's IP are taken by decision-makers in accordance with the prevailing order of delegation.

## 3. Principles relating to collaborative and contract research

Regarding collaborative research, the following principles have been established at UU:

- UU must always reserve the opportunity for research staff to publish their research results within a reasonable timeframe following their production,
- UU must always ensure that research staff are able to conduct further research with their own results,
- if a collaboration, through the agreement into which UU enters, leads to ownership or use of IP being transferred to a partner, remuneration is to be paid to the author(s) corresponding to the market value of the result/use.

With regard to contract research, refer to the “Guidelines for contract research at Uppsala University”.

Support in producing collaborative or contract research agreements can be obtained from the Legal Affairs Division. Support in negotiations on collaborative agreements can be obtained from the Innovation Partnership Office at Uppsala University.

To facilitate the work of heads of department in connection with, for example, contract research agreements or collaborative agreements where the agreement affects the employee's rights in relation to IP, the Legal Affairs Division can supply a form template. The head of department can use this form to ensure that the responsible researcher at UU has familiarised themselves with and accepted the conditions for participation in the project, and has committed to only allowing individuals who have also done so to work on the project.

### 3.1 Regarding Uppsala University's holding company

UU strives to both participate in international research projects and to respect the ‘professor's privilege’, on the basis that this benefits both education and research as well as utilisation and commercialisation.

Certain research collaborations require participating researchers to fully or partially transfer their rights in accordance with the ‘professor's privilege’. To participate in these research collaborations, UU needs to be able to manage research results in a professional manner; this requires an ability to manage IP.

In such cases, if the holding company so permits, participating researchers can agree to temporarily or under specified conditions transfer their IP to a limited company under the holding company. In such cases, the project in question may need to bear any costs

that arise. Assistance in producing an agreement can be obtained from the Innovation Partnership Office and the Legal Affairs Division.

### **3.2 Regarding students' projects**

Students' projects may require specific regulation in terms of ownership and confidentiality. In such cases, students must be informed in good time about any regulations that affect the implementation of projects and must enter into necessary agreements before the work begins. Responsibility to inform students falls to the teacher responsible for the course.

### **3.3 Regarding research infrastructures**

For employees working in research infrastructures (national or international), special agreements concerning IP must be drawn up when this is necessary for the infrastructure to function in line with its intended purpose.

## **4. Regarding patenting in relation to publication**

Researchers who intend to apply for patent protection for IP are encouraged to consider postponing publication or other public access to that IP until patent protection has been applied for.

## **5. Reporting an outside activity**

The guidelines for monitoring employees' outside activities at Uppsala University regulate the process for reporting such activities. Commercialisation activities, licensing or selling IP may be subject to reporting requirements for outside activities.

## **6. Regarding conflicts of interest and conflict and dispute resolution**

The basic rule is that conflicts in connection with rights to IP and interpretation of contractual principles described in these guidelines must primarily be resolved through mediation or another kind of informal process.

## **7. Regarding record keeping**

Regarding record keeping, refer to existing instructions for employees and all those engaged at UU (<https://mp.uu.se/web/info/vart-uu/uuarkiv/foreskrifter> and any other instructions in force at a given time).

## **8. Regarding support functions at UU**

Support and advice regarding utilisation and collaboration can be obtained from the Innovation Partnership Office.

Support and advice regarding utilisation, commercialisation and advice on IP issues can also be obtained from UU Innovation. Notification to UU Innovation enables UU to

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maintain statistics on commercialisation activities originating at UU. UU Innovation is the point of contact for questions relating to IP and to these guidelines.

Other support can also be obtained, for example in the form of EU project coordinators, research secretaries, the Financial Administration and Procurement Division and the Legal Affairs Division.



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# Review and revision of guidelines for intellectual property at Uppsala University

## Proposed decision

- to adopt Guidelines for intellectual property created at Uppsala University UFV 2020/943 in accordance with the working group's proposal.
- that the decision taken by the Vice-Chancellor on 9 December 2014, numbered UFV 2014/740, be rescinded from 21 June 2022.

## Description of the matter

The Vice-Chancellor adopted guidelines on intellectual property first in 2014 (UFV 2014/740). Uppsala University was the first university in Sweden at that time to adopt such guidelines. Since their implementation, the guidelines have largely proven to work well despite parts needing potential clarification and/or adjustment to adapt them to new operational needs or approaches. A review of earlier guidelines was conducted by the appointed working group following a V-C meeting on 5 May 2020. An initial draft was then circulated for internal consultation with the option to submit statements (March 2021). The working group responded to the comments and an updated proposal (appendix 1) was presented to the Vice-Chancellor (24 May 2021), followed by the Vice-Chancellor's Management Council (14 June 2021). The reworked proposal has been used during the year as a basis for Co-Determination Act negotiations with trade unions, and the local negotiations ended in disagreement. During the negotiations the unions presented their own counterproposal for guidelines (appendix 2). Central negotiations also ended in disagreement (appendix 3). The matter was then taken up at the Vice-Chancellor's Management Council (13 June 2022) to provide an update on the parties' discussion.

## Relation to previous decisions

In line with the working group's proposal, the revised guidelines clarify that it is the intellectual property rights of research findings and teaching materials that accrue to the authors according to the 'professor's privilege'.

- 1) The University reserves a cost-free right of use of certain **research findings**. This is important as situations can arise within a research group where a researcher is dependent on using another researcher's findings in order to continue conducting their research. It may occur that a right of use is also needed in other situations, for example a right of use of a computer program that controls measurement equipment or that compiles research data. The right of employers to use intellectual property rights generated by





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employees is referred to in the jurisprudential literature as the ‘rule of thumb’.

A special arrangement applies to computer programs in accordance with the Copyright Act (Section 40a), which entails that ownership is transferred to the employer. The working group's proposal is for the University to waive this right and for ownership rights to computer programs created as part of research or teaching to accrue to the authors. Uppsala University reserves a cost-free right of use of such computer programs, however. This right of use is somewhat broader than the right of use according to the rule of thumb, with a broader right to modify and copy the program.

- 2) The current guidelines do not cover **teaching materials**. In line with the working group’s proposal, teaching materials are included in the new guidelines to clarify that Uppsala University has a right of use of teaching materials according to the rule of thumb. The view of the working group is that the proposed right of use in line with the rule of thumb provides a reasonable balance between the needs of the employer and the interests of the teaching staff. The right of use refers to appropriate teaching materials and the items covered are established in part by standard practice. This range of items can change over time and may differ between departments. If teaching materials are intended to be used by the University for a longer period of time, for example in a recorded lecture, consideration should be given to whether they should be created in accordance with special instructions from the employer.
- 3) The current guidelines do not cover IP in relation to **research infrastructures**. The new proposal specifies that employees working in research infrastructures are to produce special agreements concerning IP when this is necessary for the infrastructure to function in line with its intended purpose.

### Of particular note

#### Considerations

The trade unions consider (UFV 2020/943) that the rule of thumb is not applicable to teaching at Swedish universities. The unions believe that the proposal for guidelines entails a full right of use of teaching materials for the University and that this may have negative consequences in the form of reduced creativity and freedom when designing such materials. They also believe that teachers may end up avoiding spontaneously recording lectures if they risk being used without their consent in subsequent



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courses. Furthermore, the unions believe that teachers should be given a concrete opportunity to decline the use of their teaching materials.

The working group believes that the right of use in line with the rule of thumb is limited to an appropriate extent in the proposed formulation and that there are good opportunities for a teacher to object, for example if the material is no longer current or does not correspond to an accepted standard. If, instead, a teacher were to be given the exclusive right to object then the proposed right of use would be watered down and lacking any practical application.

The unions and working group are consequently in disagreement as to whether the rule of thumb is applicable to teaching materials. The working group notes here that its view is consistent with the order in place at a majority of Swedish higher education institutions, as specified in those institutions' guidelines or other statements. The working group further notes that if the trade unions' view were to be considered valid, i.e. that the higher education institutions have no own right of use of teaching materials but are still responsible for how teaching materials are used by their teachers, then this may be presumed to entail a need for the University to control which teaching materials are used to a markedly greater extent than is the case today. The introduction of this kind of system of control could then be deemed as a curtailment of academic freedom.

### **Comparisons with other universities and higher education institutions**

Out of twelve universities and higher education institutions (Chalmers, Gothenburg University, Karlstad University, Karolinska Institutet, KTH Royal Institute of Technology, Linköping University, Lund University, Swedish University of Agricultural Sciences, Stockholm University, Umeå University, Uppsala University, Örebro University) that have adopted IP guidelines or similar policy documents, ten have claimed right of use of teaching materials with reference to the rule of thumb, or to rules corresponding to the rule of thumb. The exceptions are Karlstad University and currently Uppsala University, which do not cover teaching materials in their guidelines. Three of the ten universities (Gothenburg, Lund, Linköping) have specified a limitation to the right of use insofar as no right of use is obtained for certain types of teaching material (e.g. personal notes and presentations) before they are made available by the author. This limitation has an equivalent in legal practice (Levin/Hellstadius, *Lärobok i immaterialrätt*, 2018, p. 141).

Six of the twelve universities have specified the rule of thumb or rules equivalent to it as a basis for the right of use of research findings. Three of the six universities that do not do so (Stockholm, Umeå, Örebro)



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exclusively cover teaching materials in their guidelines. Three universities (Uppsala, KTH, Karlstad) have not currently specified a general rule of thumb, but Karlstad specifies that ownership rights may depend on accepted practice.

### **Decision that no longer applies**

The decision to adopt new guidelines replaces decision UFV 2014/740.

### **Follow-up of decision**

The new guidelines will be communicated via the Staff Portal and Management News, and will also be raised during management training.