

BRIATHAR DÉ MO LÓCHRANN



# MIC

MARY IMMACULATE COLLEGE  
COLÁISTE MUIRE GAN SMÁL

**POLICY:**

**Intellectual Property Policy Statement**

**FIRST DRAFT:**

**April 2019**

**ADOPTED:**

**UR 2019#02**

**AMENDMENTS:**

**ET 2019#7 (June 2019)**

**REVIEW:**

**Every 4 years and upon any significant change in national policy and guidance**

<b>Date of Policy</b>	<b>June 2019</b>
<b>Review Date</b>	<b>June 2023</b>
<b>Policy Owner</b>	<b>ET</b>
<b>HEI Approving Body</b>	<b>UR</b>
<b>Contact Person</b>	<b>VPAA; VPR; VPAF</b>

## **Intellectual Property Policy**

### **1. Introduction**

#### 1.1. Preamble

The Mary Immaculate College Intellectual Property Policy ('this Policy') forms part of the underpinning of a culture of discovery and knowledge development that generates material outputs with tangible benefits for the College, its academic staff, researchers and the community at large, and contributes to the national knowledge economy. An overview of IP and related regulation is provided by the Irish Patents Office on their website located on <https://www.patentsoffice.ie/>

#### 1.2 Context

- i. Communication from the Higher Education Authority (5<sup>th</sup> March 2018) "Review of Intellectual Property Management and Conflicts of Interest & Implementation of Recommendations" (see Appendix 1).
- ii. MIC Statement of Governance & Internal Control [Financial period to 31st August 2018], subsection 25 "Intellectual Property (IP) and Conflict of Interest" (see Appendix 2).
- iii. IP and related regulation is provided by the Irish Patents Office (see Appendix 3)

#### 1.3 Policy Purpose and Objectives

This single MIC IP Policy establishes a framework for the ownership, protection, processes and professional management of intellectual property (IP) arising from the College's academic activities, incorporating the broad spectrum of scholarship and research activity (for definitions see Appendix 4). This includes the production of academic materials (such as textbooks, online and traditional lecture/tutorial/laboratory materials, manuals, videos, curriculum aids for schools), as well as research outputs in the form of original literary (books, articles, presentations), dramatic, musical and artistic works. This Policy does not apply to IP created by undergraduate students in the course of their undergraduate education.

The Policy is made manifest in the form of two operational IP Implementation Plans:

- a) Implementation Plan for the Curriculum Development Unit (CDU) and
- b) Implementation Plan for the wider College community.

It establishes guideline principles and practices for determining and safeguarding the interests of originators (or 'Creators') of IP, the College and external organisations.

For College staff, the Policy -

- establishes a positive climate that encourages identification, generation and commercialisation of MIC IP;
- provides a mechanism for protection of IP;
- provides support for staff in the exploitation of MIC IP; and
- facilitates the establishment of structures to commercialise MIC IP (such as campus companies).

For the College, the Policy -

- establishes unambiguously and clearly the ownership of MIC IP;
- encourages knowledge transfer in line with overall College and national objectives;
- creates an innovative knowledge development climate on campus;
- generate additional income to further support research and scholarly activities;
- safeguards the academic, professional, legal, and financial interests of the College; and
- ensures compliance with third party contractual obligations.

For External Organisations, the Policy -

- encourages mutually beneficial relationships with MIC in the creation and exploitation of IP;
- stimulates interest in MIC as a source of educational and research expertise with economic potential;
- recognises the legitimate economic and commercial interests of external partners in the context of agreements entered into with the College; and
- facilitates a professional interface between external organisations and the College.

#### 1.4 Related Policies

This policy should be read in association with the MIC Conflict of Interest Policy.

## 2.0 Commercialisation

2.1. The College is committed to managing and commercialising MIC IP in a manner which ensures optimum benefit to society, the national economy and the College, and provides financial reward and recognition to Creators and the College.

2.2. It is the responsibility of the College to seek the most effective means by which MIC IP may be commercialised in accordance with this Policy. The College will maintain a flexible approach to bringing MIC IP into commercial use. While each case will be considered individually, the College will not generally assign title to MIC IP to external organisations. Exceptions to this rule must be approved by the Vice President Research.

2.3. In commercialising MIC IP, the College will be guided by international best practice, including the National Codes of Practice for Managing and Commercialising IP from Public/ Private Collaborative Research, Funding Agency Requirements and Guidelines for Managing Research Generated IP, and other relevant codes, guidelines and requirements.

2.4. The College will engage in the commercialisation of MIC IP where it is satisfied that it has the appropriate right to do so. MIC IP is generally provided on an 'as-is' basis and without any expressed warranty or guarantee of performance. Any agreement for the commercialisation of MIC IP must operate to levels of risk management appropriate to the needs of the College.

2.5. In the normal course of events, the College will not enter into agreements with respect to improvements to MIC IP which have yet to be developed.

### **3.0 Ownership**

#### **3.1. Ownership of MIC IP**

Under current legislation, in broad terms, MIC automatically owns certain types of IP created by College staff in the course of their employment. However, in recognition of the unique status of a university level college and acknowledging a long standing academic tradition, the College does not assert ownership of IP that the College deems to be of a non-commercial nature. These include pedagogical works, scholarly publications, books or artistic works of MIC staff, regardless of the form of expression.

This exception does not apply to:

- MIC IP that is created by College staff pursuant to a contract between the College and a third party, unless there is a written agreement to the contrary;
- copyright in software or database rights;
- MIC IP produced in electronic format where significant College resources in the form of personnel (e.g. BLU, Educational Technologists, IT staff) and/or in the form of website / learning environment material (e.g. Moodle with management features, online courses for educators and trainers, tailored learning environments); in these circumstances, MIC reserves the right to use such material on a royalty-free, non-exclusive basis.

#### **3.2. MIC IP Policy Application**

This Policy applies to any IP that is created, discovered, invented, conceived or first reduced to practice in whole or in part or caused to come into existence by College staff:

- while undertaking normal, or specifically assigned, duties when IP could be reasonably expected to result from the conduct of those duties;
- when using College equipment, supplies, facilities or College assets, and where the use of such is important to the creation of the IP;
- when using the College's confidential information, trade secrets, know-how or any MIC IP;
- in relation to any work performed for the College (including work carried out pursuant to any third party funded research programmes).

#### **3.3. Third Party Research, Contract Work and Consultancy**

3.3.1. MIC recognises that the competence of College staff may be further enhanced by participation in activities involving collaboration with industry, and recognises that such collaboration fosters the transfer and application of knowledge, and contributes to national economic development.

3.3.2. It is MIC policy that, in return for the prior knowledge, know-how and experience that College staff bring to third party research or consultancy projects, the College should share in any benefit arising from commercial exploitation of MIC IP resulting from that research, or other work, carried out by the College on behalf of the collaborating organisation.

3.3.3. Ownership of the IP arising from such work will be subject to (a) the provisions regarding ownership as are contained in the relevant contract between the collaborating organisation and MIC, and (b) the Guidelines as set out in the National Codes of Practice, the

Funding Agency Guidelines for the Management and Commercialisation of IP and other relevant codes, guidelines and requirements.

3.3.4. MIC will generally seek to employ a standard contract for all such work; deviations in contract formats may be used on the basis of particular circumstances, taking into account the overall interests of the College, the collaborating organisation and/or incorporating guidelines that may be laid down from time to time by the College or other agencies.

#### 3.4. Private Consultancy

MIC IP may not be used in the execution of private consultancy assignments.

#### 3.5. Relinquishing of rights

Where the College decides not to commercialise or otherwise use or exploit MIC IP, and where it is legally able to do so, it will consider any request, from the Creator(s) to obtain ownership of the relevant IP. Should the College agree to any such request, then the terms of any transfer of ownership will be subject to the College receiving a fair consideration arising from any successful commercialisation of the MIC IP. In addition, the Creator(s) concerned will be required to reimburse the College for costs and expenses incurred in relation to the establishment, registration and maintenance of such MIC IP as is deemed in the opinion of the College to be necessary at such time of disposal. Notwithstanding the foregoing, the College will be free to dispose of the MIC IP as it sees fit.

## Appendix 1: Review Letter

### *Review of Intellectual Property Management and Conflicts of Interest*



5 March 2018

BY EMAIL

To: Presidents of Higher Education Institutions

### ***Review of Intellectual Property Management and Conflicts of Interest & Implementation of Recommendations***

Dear President,

As you will be aware, the Review of Intellectual Property Management and Conflicts of Interest has recently been published. The Review was commissioned by the Higher Education Authority (HEA) in partnership with Knowledge Transfer Ireland (KTI) in response to issues raised at the Public Accounts Committee. The HEA extends its thanks to the 22 HEIs involved for their cooperation with the Review, particularly the five institutions that were selected for in-depth interviews and fieldwork.

The Review concluded that the HEIs have demonstrated good practice, particularly in the management of IP commercialisation, but also identified some areas for improvement. The Review put forward ten recommendations, primarily in relation to conflicts of interest and spin-out companies. In brief, these recommendations relate to the following areas:

1. Single, publicly available & regularly reviewed IP Policy in each HEI;
2. Common IP Policy framework across HEIs;
3. Clear decision-making and dispute-resolution processes;
4. Common principles underpinning spin-out formation;
5. Clarity on revenue share mechanisms;
6. Determination of creator contributions at initial disclosure;
7. Awareness of potential conflicts of interest within IP commercialisation;
8. Dedicated conflict of interest policy;
9. More robust governance and management of conflict of interest;
10. Triggers for policy review.

Further detail in relation to each recommendation may be found in the Review. We request that you ensure that the full report is brought to the attention of all relevant staff at your institution.

#### **Implementation of Recommendations**

The process of implementing these recommendations has already commenced and enhanced engagement is underway between HEA, KTI and other stakeholders with the aim of strengthening IP

policies and procedures. Currently, KTI is leading on the development of responses to these recommendations, in the form of enhanced practical guidance to HEIs, in cooperation with the HEA.

The HEA will embed these outcomes into existing oversight processes to ensure their ongoing implementation. As part of the HEA's ongoing process of revision and updating of the Annual Statement of Governance and Internal Control from HEIs to the HEA, new requirements will be introduced. We anticipate that these will be as follows:

HEIs must confirm the following:

- a) They have a single IP Policy, which covers all major commercialisation routes, which shall include ownership and management of IP, licensing and spin-out creation;
- b) The policy is available on the HEI website (URL to be supplied);
- c) The policy contains a clear description of decision-making processes relating to IP commercialisation, including a dispute-resolution process, noting that key decisions must involve at least one senior HEI decision maker who is outside the academic research hierarchy;
- d) The date of last policy review, noting that it must be reviewed at least every 4 years and must be reviewed upon any significant change in national policy and guidance;
- e) The policy has been approved by the Governing Body.

Consulting with KTI, the HEA will review whether any further requirements should be introduced to the Annual Governance Statement in support of the common IP Framework. New requirements will also be introduced in relation to conflicts of interest:

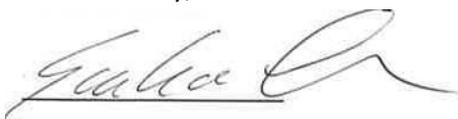
HEIs must confirm the following:

- a) They have a dedicated Conflict of Interest policy which is available on the HEI website, regularly reviewed, and is approved by the Governing Body. The IP Policy must refer the reader to this Conflict of Interest policy and vice versa;
- b) A summary of all potential Conflicts of Interest is reported to the Governing Body annually, with annual review of existing management mechanisms for same. Evidence of this annual reporting and review must be made available to the HEA, on request.

These new requirements will take effect from the current financial year, 2017/18, and the Annual Governance Statement template will be issued by the HEA to the HEIs by October 2018. As usual, this Statement must be submitted to the HEA no later than 6 months after the end of the financial year.

We appreciate your ongoing cooperation in relation to these matters.

Yours sincerely,



Graham Love  
Chief Executive

**Appendix 2: MIC Statement of Governance & Internal Control**  
**[Financial period to 31<sup>st</sup> August 2018]**  
**(Excerpt)**

Mary Immaculate College has adopted a code which is in compliance with the Higher Education Authority (HEA)/Irish Universities Association (IUA) Code “Governance of Irish Universities.” The College has implemented procedures to meet the requirements of that Code. The College notes that this code (originally published in 2007) was revised in July 2012 to incorporate provisions contained within the Department of Finance Code of Practice for the Governance of State Bodies, which was published in May 2009.

A new Code of Practice for the Governance of State Bodies was published in August 2016 with effect from 1 September 2016 and the Governance of Irish Universities Code is currently being updated in line with the new requirements of the State Code. MIC has implemented procedures to meet the new requirements of the State Code 2016 and is currently reviewing the processes and procedures around its governance and executive boards to ensure that MIC is in full compliance with the code henceforth.

*An tÚdarás Rialaithe (UR)* (the Governing Authority) has approved the Mary Immaculate College annual Statement of Governance and Internal Control for the financial period ended 31 August 2018.

**25. Intellectual Property (IP) and Conflict of Interest**

- a. The College is in the process of developing a single IP Policy which will come before *An tÚdarás Rialaithe* for adoption in the FYE 31.08.19. Following its adoption it will be published on the MIC website. The policy will:
  - Reflect the requirements of the national IP Protocol
  - Clearly set out all IP processes and researcher obligations
  - Include a clear description of IP commercialisation decision-making processes
  - Include a clear dispute resolution process
  - Describe revenue share mechanisms
  - Describe potential for conflicts of interest and direct researchers to the relevant sections of the College’s Conflict of Interest Policy
- b. The College is in the process of developing a single IP Conflict of Interest Policy which will come before *An tÚdarás Rialaithe* for adoption in the FYE 31.08.19. Following its adoption it will be published on the MIC website.
- c. To date, there have been no IP commercialisation or IP conflicts of interest. Henceforth, the Governing Authority will be made aware of all IP commercialisation and IP conflicts of interest on an annual basis.
- d. To date, there has been no major commercialisation of intellectual property, including spin-out companies at the College.

**What is IP?**

The type of property that is familiar to most people comprises physical objects. People own clothes, cars, houses and land. Intellectual Property (IP), on the other hand, is the product of someone's mental efforts. Thus an individual's creativity and innovation can be owned in much the same way that they can own physical property. National and International laws and conventions recognise the product of a person's mental efforts as an Intellectual Property right (IPR).

IP is all around us. Every product or service that we use in our daily lives is usually the result of a long chain of big or small innovations, such as changes in designs, or improvements that make a product look or function the way it does today. Regardless of what product an enterprise makes or what services it provides, it is likely that it already has or is regularly using and creating a great deal of IP. For example, almost every business enterprise has a trade name and may have one or more brands and should consider protecting them as trademarks. Many will develop creative original designs. Many will have produced, or assisted in the publication, dissemination or retailing of a copyrighted work. Some may have invented or improved a product or service.

Some forms of IP require formal application and examination before you can claim a right to ownership. Others, such as copyright, do not.

So applying for an IP right to protect your idea can be critical if you want to build a business and establish your presence in a market. It is also important to understand the different types of IP and the advantages of each.

The main intellectual property rights cover a number of areas, including Patents for Inventions, Trade Marks, Industrial Designs and Copyright.

- Patents are concerned with inventions producing a technical result - of new and improved products, processes and uses that are capable of industrial application.
- Trade Marks are concerned with brand identity - principally of goods and services. They can be distinctive words, marks or other features, the purpose of which is to make a distinction in the mind of a customer between different traders, products and services.
- Designs are concerned with the appearance of a product - of the whole or a part of a product - features of, in particular, shape, configuration, contours, texture or materials of the product itself not dictated by functional considerations.
- Copyright is concerned with original literary works such as novels, poems and plays, musical and artistic works such as musical compositions, sound recordings and TV and radio broadcasts, software, multimedia films, drawings, maps, charts, plans, paintings, photographs and sculptures and works of architecture. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

It should also be noted that intellectual property also encompasses such areas as know-how, trade secrets, protection of plant varieties etc. It is often the case that more than one type of intellectual property right can be applied to the same creation.

#### Appendix 4: Definitions in this Policy

‘Creator’ means any College staff responsible (whether alone, jointly with or in conjunction with others) for the creation of any MIC IP.

‘IP’ includes any copyright, patent, invention, discovery, improvement, concept, idea, design rights, trade mark, service mark, brand rights, audio-visual or computer materials, database rights, know-how, trade secrets, confidential information (including the contents of laboratory note books or stored by electronic means), and all other IP and rights of a similar nature, whether vested, contingent or future anywhere in the world, whether registered or not, or capable of registration or not, and, including all applications and the right to apply for any of the foregoing rights.

‘IP Agreement’ means any agreement granting commercial rights in MIC IP to a third party.

‘IP Income’ means payments received by the College as consideration under a valid IP Agreement; this includes licence execution payments, ongoing royalty payments, milestone payments, option payments, performance payments, assignment fees and any other cash payments that are made to the College in consideration of the grant or transfer of the commercial rights of MIC IP;

IP Income excludes:

- any administration fees or reimbursement of costs that the College may seek to charge a third party for direct costs (e.g. legal costs, patent costs);
- any fees included within an IP Agreement for the provision of support services (e.g. knowledge transfer).

‘Net IP Income’ means IP Income less direct and apportioned overhead costs associated with the management and commercialisation of relevant MIC IP and any related payment obligations entered into by the College with third parties or research funding agencies; overhead costs include all patent, insurance, professional fees and expenses and any other reasonable overhead costs.

‘Publication’ means putting the public in possession of an invention / discovery by way of speech, talk, paper, drawing, photograph, printed work, tape, video recording or other electronic means, or any other disclosure given or distributed, except on a confidential basis; deposition of a thesis in the MIC Library constitutes ‘publication’ and may prejudice patenting action or agreed secrecy unless appropriate provision is made for controlled access to the thesis.

‘College staff’ means any academic, research and other College staff member (full-time or part-time), post-graduate students in the course of their education at the College or any other persons, including adjuncts, consultants, emeritus personnel and visitors; and ‘Visitor’ means any person visiting the College for the purposes of undertaking any work or research for or at the College.