

INTELLECTUAL PROPERTY MANAGEMENT POLICY

Effective 18 December 2009

1. Policy Statement

CABI will own all Intellectual Property Rights (IPR) generated by its own activities, and externally funded activities except where CABI has agreed otherwise.

As a not-for-profit international UN treaty-level organisation, net financial benefit received from the exploitation of IPR arising from CABI's activities will be used as additional resource for CABI to pursue its mission.

2. Introduction

The law essentially protects the investment of individuals and organisations in their own ideas and the outputs of those ideas. Such protection is generally referred to as intellectual property rights (IPR), and there is a recognised need for organisations to be aware of, to value and to protect their investment in intellectual property (IP). The main protections available for IP are:

- Patents
- Confidential Information (Trade secrets & Know-how)
- · Rights in Designs
- Database Right
- Trade Marks
- Copyright

The general position in the UK is that ownership of IPR that has come into existence in the course of employment will vest in the employer. Accordingly, almost all IPR created by CABI employees in the course of their employment will be automatically owned by CABI.

More generally as a part of the Agreement on Trade-Related Aspects of Intellectual Property Rights (known as 'TRIPS'), the World Trade Organisation has required all member countries to establish minimum levels of IPR protection. In dealing with IPR generated by non-UK based staff, it is the policy of CABI to follow, as far as possible within the individual national legislation, procedures and practice as if the IPR had been generated wholly within UK jurisdiction.

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Patents

The patenting process provides protection for the inventor in the form of a monopoly right to work an invention, while ensuring public disclosure of the invention sufficient that work can be repeated and progressed by others. To be patentable an invention (usually a product or process) must:

- be novel (i.e. the invention must be new)
- involve an inventive step, (i.e. the invention must not be obvious to someone with experience in and knowledge of the relevant field)
- be capable of industrial application (the invention must be capable of being made or used in industry)

To be 'Novel' the details of the invention **must not** have been made public before the date on which the application for a patent was filed at the relevant patent office. Publication includes any communication outside a confidentiality agreement including verbal descriptions, submission of abstracts, posters and presentations at scientific meetings as well discussions with people other than immediate colleagues. If you are in any doubt you should file an Inventor's Preliminary Disclosure (see 'Procedures for Identifying and Protecting IP') form or put in place a confidentiality agreement before making any disclosures.

Inventions of certain kinds cannot be protected by patents: scientific or mathematical discoveries (although a discovery may lead to a patentable invention), theories or methods; literary, dramatic, musical or artistic works; ways of performing a mental act, playing a game or doing business; the presentation of information; animal or plant varieties; methods of medical treatment or diagnosis; and inventions which are contrary to public policy or morality. Generally speaking, a claim to for a computer program will only be allowable where the claim reflects the features of a patentable invention caused by running that program.

The procedure for filing a patent application is fairly complex and expensive (£12-20,000+ depending on the complexity of the invention and number of territories where the patent will apply). As long as renewal fees are paid every year, most patents have a life of twenty years from the date of application (though this is extendable for some patents).

Generally speaking, the proprietor of a patent has the exclusive right:

- (i) where the invention is a product, to make, sell, use, import or keep the product; and
- (ii) where the invention is a process, to use the process or offer it for use; and
- (iii) where the invention is a process, to sell, use, import or keep any product obtained from that process.

Any other person who does any of these things without the consent of the proprietor will, on the face of it, infringe the patent. The success of any proceedings brought for infringement of a patented invention will be directly linked to how well the original patent specification was drafted. It is also possible for a patent to be revoked if the specification does not sufficiently describe the invention it claims.

Confidential Information (Trade Secrets & Know-how)

Knowledge of means of doing things in a better way can itself be a source of considerable competitive advantage as long the mechanisms are kept secret. It is possible to protect information which is sensitive to a business through rights in confidential information (which covers trade secrets and know-how). Whilst not an IPR as such, the law of confidence can protect such sensitive information, both technical and commercial, without the need for any registration. To be enforceable, the information must satisfy three tests:

- (i) it must be confidential in nature;
- (ii) it must have been imparted in circumstances in which an obligation of confidence arises; and
- (iii) its unauthorised use would be to the detriment of the person or company imparting it.

No protection is afforded if the information is independently discovered.

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Because it might be sometimes difficult to show all of these elements, disclosure of confidential information will often be covered by a confidentiality agreement (see section 5 below). It is easier to satisfy the requirements for breach of confidentiality where there is an agreement in place because the contract provides evidence that certain information was disclosed under a contractual duty to keep it confidential. If the party who disclosed the information suffers loss as a result, there will be a clear claim for breach of contract (subject to any defences the other party may have).

Serious consideration should be given to maintaining confidentiality of mechanisms and other concepts where i) there is a low likelihood of a patent being granted, ii) the probable benefits of protection are outweighed by the resultant disclosure, or iii) a combination of internal competence makes it highly unlikely that others would be able to replicate the mechanisms effectively.

Unlike other IPR such as patents, copyright and registered design, the benefit of confidentiality can in principle last indefinitely and has a low cost of maintenance.

Rights in Designs

Design rights protect the appearance of the whole or part of a product. They can be registered or unregistered.

A registered design provides a legal monopoly for designs which are "new" and have "individual character." In the UK, protection lasts a maximum of 25 years, with registrations renewed every five years.

An unregistered design gives a right against copying. Protection is given at both the UK and EC level, as with trade marks (see below) and the right subsists automatically in qualifying designs. The EC right is broader in scope but only lasts for three years. Under the UK right, protection lasts for ten years from first marketing or fifteen years after creation of the design, whichever period is shorter.

Rights in Databases

Databases are collections of independent works, data or other materials "arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means". While a database can attract copyright as a literary work (see below), databases can also be protected by a separate database right. Some databases will be protected by both rights, while others may only be protected by one or the other (or neither).

The database right is designed to protect investment in databases by their makers. Database rights protect a database if its contents have involved a substantial (either qualitative or quantitative) investment in their obtaining, verification or presentation. Investment in the creation of new content in the database is not taken into account.

The first owner of the database is the "maker" of it i.e. the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtainment etc. Like copyright, database rights vest in the employer if created by an employee in the course of his employment. There is frequently more than one "maker", e.g. different people or companies contribute in different ways to the creation of the database. In such cases, the database right is jointly owned by the different makers.

Database rights last for fifteen years, but this period can be renewed when there is a substantial change to the contents of the database which means that, in practice, the rights may be renewed indefinitely if the database is being continually updated.

Database rights are infringed by the unauthorised extraction or re-utilisation of all or substantial parts of the database or by repeated and systematic extraction or re-utilisation of insubstantial parts of the database. Such extraction can involve the permanent or temporary transfer of the database contents to another medium.

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Trade Marks

Trade marks are symbols used as a means of identification of goods and services with a particular supplier (the proprietor of the trade mark). It may be possible to register as a trade mark any sign which:

- (i) is capable of being represented graphically;
- (ii) is capable of distinguishing the goods and services of one undertaking from those of others;
- (iii) has distinctive character; and
- (iv) is not descriptive of the goods or services for which registration is sought.

Copyright

Copyright is different from most other forms of IPR in that it is automatic and instantaneous. For a work to attract copyright, it does not have to be novel, but rather just original. The "originality" threshold in copyright law is a low one: it must not be copied and has to be the result of independent intellectual effort.

Copyright is a property right which protects:

- (i) original literary, dramatic, musical and artistic works;
- (ii) sound recordings, films and broadcasts; and
- (iii) the typographical arrangement of published editions.

The owner of copyright is normally the creator of the work (even if the idea is someone else's and even if it has been commissioned and paid for by someone else). However, if an employee creates a copyright work in the course of their employment then the employer will usually own the copyright in the work.

Copyright lasts a long time: generally 70 years from the end of the year in which the author of the work dies. The owner of copyright in a work has a range of exclusive rights, including the right to copy the work, the right to issue copies of the work to the public, and the right to rent or lend copies of the work to the public. It will be an infringement of the copyright in a work to do any of the exclusive acts without the consent of the owner of copyright.

As such, copyright applies to the full range of information outputs that CABI produces as part of its daily activities. Such outputs include books and book chapters, project reports, scientific research papers, training manuals, images, conference papers, drawings, photographs, software and so on. These outputs may be published by CABI or by another publisher, may be provided to a project donor as a deliverable from that project, may be distributed to trainees on a course or simply kept on your PC for future reference. CABI may not always own the copyright to these outputs, but this does not prevent us from making better use of this rich source of knowledge to enable us to grow our business and extend our scientific influence.

Proof of ownership of copyright is required in any dispute, this is often obtained by lodging copies with solicitors or sending copies to yourself by registered mail.

3. Scope of the CABI Policy

The policy covers the following:

- i) living organisms, their products and processes involving organisms
- ii) reference collections and associated data
- iii) inventions and trade secrets
- iv) printed and electronic publications

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A Biological Material

CABI:

- i) is a leading world organisation on the identification and classification of the biological diversity of fungi, bacteria and nematodes;
- ii) receives living and preserved non-living biological material in support of its objectives;
- iii) maintains large collections of living & preserved biological material in ex-situ reference collections;
- iv) has a vast store of unique information on the origin and diversity of the organisms in its reference collection;
- v) is an International Depositary Authority (IDA) under the terms of the Budapest Treaty,

and is, therefore, a major force in the process of identifying, classifying, maintaining and using biological diversity of some key groups of biological organisms of high economic, environmental and ecological importance.

CABI adds value to received and collected biological material, through purification, expert preparation, authoritative identification, description, determination of biochemical and other characteristics, comparison with related material, safe and effective storage/preservation, evaluation of value for biological control uses, and indication of importance of beneficial and detrimental attributes. When so agreed with the originator, CABI assumes the right to utilise the material for the benefit of CABI and its members.

CABI:

- complies with national legislation governing rights over natural resources and access to genetic material, and interprets it policies in a manner consistent with the Convention on Biological Diversity (CBD), which came into force in December 1993;
- ii) assists national institutions identifying, classifying, and understanding the biological diversity of the groups of organisms in its mandate, and in developing national capabilities in these areas; maintains comprehensive reference collections & associated information on target organism groups;
- iii) maintains comprehensive reference collections & associated information on target organism groups;
- iv) makes it's reference collections and inherent information available to institutions in countries of origin and the scientific community generally; and
- v) assists national institutions to utilise biological diversity for the benefit if the originating and/or other countries, in keeping with the spirit and requirement of the CBD.

As agreed at the Thirteenth Review Conference, and therefore with regard to our member countries, "any financial income received by CABI stemming from the use of living organisms or their products will be used to enable CABI to further pursue its mission with particular emphasis on developing countries." For non-member countries benefit sharing is addressed in line with the requirements of the CBD.

B Inventions and Trade Secrets

- i) Inventions made by and trade secrets developed by CABI staff in the conduct of their normal and assigned professional duties are the property of CABI. Inventions will be considered for patent protection by CAB International, who will act as the patent applicant, and subsequent proprietor of any granted patent.
- ii) Where the inventions are made by CABI staff within the framework of funded projects, application and ownership of patents will reside with CABI, unless determined otherwise by a specific contractual requirement of the project. In negotiating such project contracts, CABI's policy will be to own all IPR resulting from the project or to have clearly defined rights to commercialise such IPR.
- Where know-how/trade secrets are developed by CABI staff within the framework of funded projects, ownership will reside with CABI, unless determined otherwise by a specific contractual requirement of the project

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- iv) The processes which have been adopted for identifying patentable inventions, their capture, and subsequent decisions regarding applications, territorial coverage, response to examination, and prosecution of infringement are detailed in the separate document CABI Procedures for Patenting IP.
- v) CABI reserves the right to license inventions (whether patentable or not), know-how/trade secrets and other IPR to commercial and non-commercial organisations, and will set appropriate licence and royalty fees.
- vi) Financial income stemming from the exploitation of such IPR will be used to enable CABI to pursue its mission.

Consistent with CABI's mission and status as a not-for-profit organisation we do not provide employee-inventors with royalties in direct relation to the revenue gained through the exploitation of IPR. However, at the discretion of the Executive Management Team of CABI, an appropriate portion of net benefits gained from the exploitation of IPR may be provided to the originating CABI Centre, Businesses, Research Group/Theme or CDF, where this will enable increase of capacity for needed further invention and/or service in pursuit of the Organisation's mission. The revenue sharing policy is detailed in appendix 1 of this policy.

C Copyright

- All CABI publications, printed and electronic, carry standard copyright notification statements, indicating CAB International as copyright holder and forbidding reproduction in whole or part without permission of CABI.
- ii) Authors of books published by CABI, retain their copyright but permit CABI to publish their work. They accept responsibility for obtaining permission to use any copyrighted material in their books. Edited volumes, however, carry the CABI copyright.
- iii) The copyright on CABI software products is fully assigned to CABI except where they include data from non-CABI material. CABI software products are protected by a standard licence agreement that includes limitation of liability provisions.
- iv) Published Works prepared by CABI staff in the conduct of their normal and assigned professional duties are the property of CABI.

Whenever you are asked to produce a report for a third party, or to sign a copyright transfer form by another publisher, CABI needs to retain certain rights to re-use the information you are producing. This may be the right to make your work available throughout CABI, including posting it on an internal webserver (this is usually referred to as "self-archiving"), or the right to re-package the content alongside our other information products, adding value to our database or promoting the breadth and depth of knowledge within CABI via our Internet Resources.

This is not the same as insisting that CABI retains the copyright in the information you are producing (although this is always the preferred option!). CABI does not need to own the copyright in such outputs in order to be able to re-use them, as long as it is clear which rights we have been granted.

If a publisher requires copyright be assigned to them for a book, book chapter, scientific paper or conference paper then the author should ideally use the Amendment to Publication Agreement in Appendix 2 in order to retain certain rights for use of the material by the author or CABI. Alternatively equivalent clauses can be incorporated in the Publication Agreement itself.

Where a project has an output and the sponsor requires copyright, or other rights, to be assigned to them the following phrase should be inserted into the contract: "Notwithstanding any agreements to the contrary, and in addition to the rights already retained by CABI, CABI retains the non-exclusive right to use, reproduce, distribute, display, publicly perform, and make copies of all or any part of the work in electronic, digital or print form in connection with its own business activities".

4. Principles of Publication for Scientists

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- i) Scientists need to publish papers as a means to progress in their careers both in the wider scientific community and also for internal promotion.
- ii) Scientists have a commitment to the advancement of their science and the publication of papers contributes to this advancement.
- iii) Scientists are mandated to assist in the advancement of science promoting benefits arising from this in developing countries.
- iv) CABI has an ability to develop "products" which have commercial value, and an obligation to capture this value. Hence, there will be occasions when results generated by scientists contribute to the commercial value of a product. Where this occurs the commercial value may be lost through public disclosure of the research. In this situation, an apparent conflict of interest may occur between the needs of scientists to publish and the commercial need to fully exploit and utilise generated know-how.
- v) In addition, research may be carried out that produces results that may undermine the commercialisation and exploitation of a potential product. Under these circumstances CABI may consider it prudent to delay public disclosure of results. It is CABI's policy to not put humans, ecosystems or livestock at risk through withholding information. Where such risk exists, it will use its best endeavours to supply adequate and sufficient information confidentially to minimise such risk. Where information results from funded projects, CABI's flexibility may be limited by specific contractual requirements of the contract and will be handled on a case-by-case basis.
- vi) Scientists should use all reasonable efforts to satisfy CABI's policy to retain certain rights of re-use for copyright materials published by third parties (as described in section 3 above) but this policy should not be used to prevent publication in the event that such rights cannot be secured. However, in such a situation, alternative publishers should be considered.
- vii) Provided scientists have employed all reasonable efforts to secure the rights of re-use for copyright materials (as described in section 3 above), they may retain any remuneration or compensation provided by third party publishers in respect of books, book chapters, reviews and papers.
- viii) On occasions where, under sections (iv), (v) or (vi), resolution of best interests is required, CABI shall:
 - give full consideration to the issues involved on a case-by-case basis;
 - be minded to permit timely publication except where potential commercial value can be demonstrated that is co-incident with the strategic aims of CABI;
 - provide support and verification of achievement for the purpose of career progression in the event publication is significantly delayed or not permitted;
 - convene a Review Team, as specified in the separate document CABI Procedures for Patenting Intellectual Property, consisting of no less than three individuals, to review each case regularly to evaluate the situation in order to accommodate changes in circumstances;
 - · on the basis of (i-vi) CABI staff commit to:
 - submit publications for IP review whenever they, or their line manager, believe that the information generated may be of any potential or actual commercial value or in anyway undermine the potential or actual opportunities for commercialisation;
 - abide by the decision agreed by the Review Team, subject to regular revision on a time scale to be defined on a case-by-case basis.

5. Application of Confidentiality

Information that should be considered confidential includes any knowledge, information, data, database or experience and any business and marketing plans and projections, arrangements and agreements with third parties, customers, any ideas whether reduced to a material form or otherwise, plans and models, any processes, including but not limited to technical/scientific or management processes, any photographs, computer programmes, instructions, designs, inventions, discoveries and reports (whether technical, economic, or commercial) generated by staff in pursuit of their activities at and/or for CABI.

i) All CABI Centres shall issue and sign confidentiality agreements with all collaborating individuals, institutes and agencies where any issues of IP are potentially or actually involved.

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- The Group IP Director will ensure that such procedures are in place that (i) any information for public release is scrutinised to ensure it does not in any way prejudice CABI's name, operations or commercial opportunities and that (ii) no information generated by CABI staff that is for the public good, and conforms with our development mission or that of a funding agency, is unreasonably withheld.
- As a bonafide scientific establishment CABI shall maintain a general principle of public disclosure of information, results and outputs generated throughout the course of research and development. The exceptions to this principle shall be kept to a minimum and only include such IP that is essential for successful commercial exploitation of any product that may be derived from research activities, and where contractually obliged through funded projects.
- iv) Each member of staff will not make public any confidential information without seeking and gaining written approval from the Group IP Manager.

6. Copyright & Photographs/Photographic Images

Copyright in photographs and other images produced by CABI staff in the course of their normal and assigned professional duties is the property of CABI.

Where photographs are taken on a project activity and the images represent one of the outputs of a client funded project copyright will be determined by the terms of contract between CABI and the client.

CABI needs to be able to use the content created by its employees during the course of their employment to maximum benefit for its mission. Many images have been taken on CABI business in the past which have not been consolidated into usable form nor, in some cases, can they be assigned to a particular creator. CABI wishes to invest in creating a repository of material that is well indexed, can be repurposed in a variety of ways to serve its business and can be archived and maintained for posterity. To overcome any issues surrounding past material, where an employee can demonstrate on reasonable grounds that he or she, rather than CABI, owns the copyright in any image created before the introduction of this policy which may be of benefit to CABI, CABI will accept that position but would seek the employee's agreement to grant CABI a licence, preferably exclusive, to produce and publish, and license others to produce and publish, the image or any part of the image in print, electronic or any other form.

CABI will use all reasonable endeavours to ensure that when it uses images created by employees every copy of the image will contain a notice that includes the creator's name, where known, and the origin of the image, i.e. the CABI collection. This will bring appropriate external attention with each use of an image to the acknowledgement of the creator and to CABI's rights to exploit the material.

Notwithstanding the above, the creator may use images to illustrate articles written by him or her that are submitted to learned or professional journals and in papers presented at professional conferences.

The term 'image' is defined as including, amongst other things: photographs; maps; charts; scanning electron micrographs; graphs; and computer generated graphics.

7. Licensing of Technologies to Commercial Enterprises

CABI shall only exploit any IP generated by its staff in accordance with CABI's overall mission and individual Business Unit objectives. For any exploitation of IP, CABI will have due regard to good commercial practice and will observe the terms and conditions specified in its contractual agreements with donors, customers and other funding bodies.

CABI undertakes to ensure through any IP licence agreements with commercial enterprises that the following conditions apply:

 the IP licence agreements reflect and are in the interests of CABI's and/or the funding agencies' statutory statements of purpose;

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- that a suitable licence fee and royalty are negotiated and payment schedules defined;
- that markets and territories are defined.

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APPENDIX 1

CABI IP Revenue Sharing Policy

Under the UK Patent Act 1977, Employee Inventors are entitled to receive compensation for patents that are of 'outstanding benefit' to their employers.

Many UK academic Institutions, including Universities and the MRC, share revenue directly with the inventors. On the other hand, employees of commercial companies are considered to be employed to invent and those who are successfully inventive generally benefit through career enhancement opportunities.

CABI has some of the characteristics of both academic and commercial employer, and has adopted a policy midway between these two models.

Consistent with our status as a not-for-profit mission driven organisation CABI's policy is that benefits are via career progression and investment in research teams rather than individual financial reward.

We have adopted an IP revenue sharing policy which splits the benefits between research teams, Centres, Businesses and the CABI Development Fund rather than with the individual.

Income generated from IP will normally be distributed as follows, unless external agreements preclude this in any way.

Net revenue means net receipts after the repayment of accrued costs.

Net Revenue	Research Team/Theme/Centre	Business	CDF
Up to £10k	40%	40%	20%
£10k - £100k	20%	55%	25%
£100k - £1m	10%	60%	30%
Over £1m	5%	60%	35%

On this basis an employees' invention that was successfully exploited, would provide rewards as follows:

Total Net Revenue	Research Team/Theme/Centre	Business	CDF
£10k	£4k	£4k	£2k
£100k	£20k	£55k	£25k
£1m	£100k	£600k	£300k
£10m	£500k	£6.000k	£3.500k

Income to Business & Team/Theme/Centre can be taken as revenue or re-invested at the discretion of the relevant Director. Division of income between Team/Theme/Centre must be agreed by the relevant Regional and Theme Director.

In addition, significant individual contributions to CABI's IP portfolio will be taken into account in both promotion and performance-related pay assessments.

CABI will also ensure for scientific recognition that significant individual contributions to creating IP are detailed in patent applications and other appropriate documents.

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APPENDIX 2

AMENDMENT TO PUBLICATION AGREEMENT

1.	This amendment hereby modifies and supplements the attached Publication Agreement concerning the following Article:				
	(manuscript title)				
	 (jourr	ournal name)			
2. The parties to the Publication Agreement and to this Amendment are:					
	(corre	esponding author)			
(the Publisher)					
3.		The parties agree that wherever there is any conflict between this Amendment and the Publication Agreement, the provisions of this Amendment are paramount and the Publication Agreement shall be construed accordingly.			
4. Notwithstanding any terms in the Publication Agreement to the contrary and in Author or licensed by Publisher to Author in the Publication Agreement and any fa Publisher agree that:					
	(a)	Author shall, without limitation, have the non-excluworks (including updates), perform, and display pronnection with the Author's teaching, conference pauthor's academic and professional activities.	publicly, the Article in electro	onic, digital or print form in	
	(b) Once the Article has been published by Publisher, Author shall also have the non-exclusive right to not authorize others to make, the final published version of the Article available in digital form over the including but not limited to a website under the control of the Author or the Author's employer or thro digital repository.			digital form over the Internet,	
	(c)	(c) Publisher acknowledges the Author's assignment of copyright or other rights to Publisher is subject to Author's prior grant of the non-exclusive right to Author's employer, CABI, to use, reproduce, distribute, display, publicly perform, and make copies of the work in electronic, digital or in print form in connection with teaching, digital repositories, conference presentations, lectures, other scholarly works, and all activities associated with its business.			
5.	Hov	For record keeping purposes, Author requests that Publisher sign a copy of this Amendment and return it to Author. However if Publisher publishes the article in the journal or in any other form without signing a copy of this Amendment, such publication manifests Publisher's assent to the terms to this Amendment.			
AUTHOR			PUBLISHER		
(corresponding author on behalf of all authors)					
Date			Date		
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