

Project

Model Regulations on the Management of Intellectual Property Rights in Higher Education and Research Institutions of the Kyrgyz Republic

1. General provisions

1. This Regulation is developed in accordance with the Civil Code of the Kyrgyz Republic, the Laws of the Kyrgyz Republic "On Innovation Activity", "On Science and the Fundamentals of State Scientific and Technical Policy", "Patent Law", "On Legal Protection of Programs for Electronic Computers and Databases", "On Trademarks, Service Marks and Appellations of Origin of Goods", "On Copyright and Related Rights", "On Legal Protection of Breeding Achievements", "On Service Inventions, Utility Models, Industrial Designs", Regulations on the Innovative Proposals in the Kyrgyz Republic.
2. Higher education institutions of the Kyrgyz Republic (hereinafter - HEIs) and research institutes (hereinafter - RI) recognize the need to promote the practical application and commercial use of the results of scientific research conducted in universities and RIs, for which purpose this Regulation has been developed.
3. The activities of a HEI or RIs in the field of IP management should be focused on achieving the growth of competitiveness of products (works and services) of the HEI and RIs through the preservation and development of intellectual and scientific-technical potential as a strategic resource.
4. This Regulation regulates the issues of ownership, protection and commercial use of intellectual property objects/assets (hereinafter referred to as "*IP assets*") created by employees in the course of their official duties or activities in HEI and RIs.
5. The Regulation has a recommendatory character.
6. The objectives of these Regulations are:
 - Encouragement, stimulation and support of research and development works and their results (developments) performed by employees in the course of their official duties or activities in HEIs or RIs;
 - ensuring legal protection in the field of research activities and legal relations with third parties within the framework of the use of technologies;
 - Introduction of procedures for the identification, establishment of ownership, protection and commercialization of *IP assets*;
 - ensuring timely and effective protection and management of *IP assets* by employees in the course of their official duties or activities in HEI and RIs;
 - Creation of favorable conditions for registration, monitoring and maintenance of the *IP assets* portfolio of HEI and RIs;

- ensuring fair and honest distribution of benefits from the commercialization of *IP assets*, taking into account the contribution of the employee, university and research institute, as well as the contribution of other stakeholders;

- Strengthening the reputation of the HEI or RI as an educational and research institution and a member of society, as well as the reputation of employees by applying the results of research for the benefit of society;

- Ensuring maximum openness of science and accessibility of research results;

- Ensuring sustainable competitive positions of HEIs and RIs in the intellectual product market;

- Creation of a system of clear rules regulating relations with the results of intellectual activity created in HEI and RIs;

- Ensuring maximum freedom of research and educational activities;

- Creation of conditions for compliance with the requirements of the legislation of the Kyrgyz Republic on ensuring the legal protection of *IP assets*, fulfillment of obligations to which HEI and RIs are a party, as well as minimal risks associated with violation of the rights and legitimate interests of HEI and RIs or third parties.

7. HEI and RIs carry out the activities on creation of *IP assets* in the course of performance by employees of their official duties or performance of their activities in HEI and RIs on the basis of the following general principles:

Accessibility - HEIs and RIs intend to make IP accessible in a form that will facilitate its more efficient use for social and economic benefits. Value creation is a major focus of the commercialization and technology transfer activities of HEI and RIs. Accessibility is provided through specialized companies established at the HEI and RI for the commercialization of *IP assets* (Centre for Commercialization and Technology Transfer, TISC).

Efficiency - HEIs and RIs are rewarded and rewarded through professional recognition, career development, financial incentives or other incentives for employees and students whose IPs generate financial returns or have an obvious impact on social development.

Academic Freedom - HEIs and RIs recognize that academic freedom is a fundamental principle that cannot be restricted at any time, including the right of HEIs, RIs and students to freely publish their work, as well as to make unrestricted use of their own *IP assets* for research and education. HEI staff, RI and students interested in obtaining rights to an *IP assets*, are obliged to observe the rules of confidentiality, including not disclosing the essence of the *IP assets*, if it may lead to the loss of *IP assets* rights or commercialization opportunities.

Optimality - HEIs or RIs contribute to the conduct of research and development (R&D) activities that meet the needs of industrial enterprises and other organizations of the Kyrgyz Republic and the population. In its efforts to disseminate and commercialize *IP assets*, HEI and RI seek to optimize economic and social benefits for local, regional and national businesses in the country.

2. Key terms and definitions

8. The following terms and definitions are used in these Regulations:

HEI (employer) - a legal entity or an individual who has been granted the right to conclude and terminate an employment contract with an employee by law;

Employee - the author (hereinafter referred to as the author) of the official invention, utility model, industrial design, consisting of the employer in labor (service) relations (including combining) in accordance with the legislation of the Kyrgyz Republic.

Copyright is a right that applies to works of science, literature and art resulting from creative activity, regardless of their purpose and merits, as well as the way of expression.

Patent - a protective document confirming the exclusive right of the patentee, priority and authorship to an invention, utility model or industrial design.

Commercialization of developments is the process of putting the results of scientific research into practice and bringing to market new or improved products, services or technologies for financial gain.

Research contract - a contract for the provision of research services, agreement on joint research and development, agreement on the transfer of material, agreement on confidentiality, agreement on consulting services and any other type of contract with the researcher, which relates to his research, and/or intellectual property created in a HEI.

Specialized company - a company established for the purpose of commercial use of *IP* assets developed in HEI.

3. Service results of intellectual activity

9. Service results of intellectual activity (hereinafter referred to as *service IP assets*) and means of individualization are created by employees in the course of performance of their job duties in accordance with their job duties, within the framework of fulfillment of contracts and other agreements on creation of scientific and technical products, as well as in the course of conducting dissertation and initiative research during the period of work in HEI and RI.

10. Exclusive rights to *service IP assets* belong to the HEI and RI, unless otherwise provided by state contracts or other agreements.

11. It is necessary to conclude an additional agreement to the employment contract on creation and use of the service results of intellectual activity with an employee who directly performs his

or her official duties or takes part in scientific research, experimental design, technological or other work on creation of intellectual property.

12. Head of the structural subdivision (head of the department, director), where this employee works, is responsible for conclusion of additional agreements to the employment contract.

13. An individual who is not an employee of a HEI or RI may be involved in the performance of research, development and technological work under a fixed-term employment contract in accordance with the established procedure, whereby the HEI and RI are granted exclusive rights to all *service IP assets*, which may be derived by this individual in the performance of the relevant work. This agreement includes clauses on payment of remuneration.

4. Copyright (co-authorship) and legal protection of service IP rights

14. The authors of *service IP assets* own economic and moral rights with respect to these results.

15. Moral rights belong to the author regardless of his economic rights and remain with him in case of transfer of his economic rights to the results of intellectual activity to another person.

16. Owners of the right to the means of individualization of participants of civil turnover, goods, works or services have exclusive rights to them.

17. The right of authorship (the right to be recognized as the author of the result of intellectual activity) is a personal non-property (moral) right and can belong only to the person whose creative work has created *IP assets*.

The right of authorship and exclusive rights to an invention, utility model, and industrial design arise from the moment of occurrence of rights based on a patent. The right of authorship is inalienable and non-transferable.

18. The right to a patent for an invention, utility model or industrial design created by an employee in the course of performing his or her official duties or a specific task of an employer (*service invention – service IP assets*) belongs to the employer, unless otherwise stipulated in the contract between them.

19. If the result is created by the joint creative work of two or more persons, they are recognized as co-authors.

Relationships between co-authors of inventions, utility models and industrial designs shall be determined by agreement between them.

Non-creative assistance in the creation of an invention, utility model, industrial design (technical, organizational or mathematical assistance, assistance in the registration of rights, etc.) does not entail co-authorship.

20. Legal protection of *IP assets* arises due to the fact of their creation or due to the provision of legal protection by the authorized state body in the cases and in the manner prescribed by the legislation of the Kyrgyz Republic.

21. The procedure of use, transfer, restriction of exclusive rights, including by providing the possibility to use a *service IP assets* to other persons, recognition of these rights as invalid and their termination (cancellation) are allowed in the cases, limits and procedure established by the legislation of the Kyrgyz Republic.
22. In order to carry out accounting and reporting, all *service IP assets* are subject to mandatory registration with specialized companies.
23. The procedure for keeping records on *service IP assets* is approved by the management of the university and research institute.
24. Legal protection of *service IP assets* is provided in accordance with the current legislation of the Kyrgyz Republic.

5. Commission on Intellectual Property of the University

25. In order to assess the actual or potential commercial value of the established *service IP assets*, a special commission may be formed in the HEI and RI or this function may be assigned to an already existing advisory body of the HEI and RI (hereinafter - the Commission).
26. The procedure of the Commission's activity is determined by the management of the HEI and RI.
27. The Commission has the right to consider the issues of expediency and choice of the legal protection regime for the *IP assets* created, the issues of setting up and writing off intangible assets of the HEI and RI, the determination of the value of the *service IP assets*, as well as the remuneration of authors.
28. If the Commission decides that it is not advisable to protect the *service IP assets*, the employee has the right to file an application for a patent (state registration certificate) on his or her own and to maintain the protection document on his or her own in the future.
29. In case of commercialization of a *service IP assets*, the employee has the right to receive remuneration from the sale of the license or profit from the use of *service IP assets*, the rest of the funds is received by a subdivision of the university and research institute or other parties involved in commercialization, in accordance with the legislation of the Kyrgyz Republic.
30. The university and research institute have the right to use the *service IP assets* created by the employee for their own needs free of charge.
31. If an employee receives a patent in his own name and continues to use the invention, utility model or industrial design protected by the patent for his own needs, the employee should be paid compensation for the actual costs of patenting the relevant *IP assets*.

6. Remuneration to the employee (author) for creation and use of the service IP assets

32. In case of obtaining patents for invention, utility model or industrial design by the HEI and RI, or a decision is made on the protection of an *IP assets* in the mode of commercial secrecy, as well as in case of registration of a computer program or database on behalf of a HEI or RI, an employee who is not the right holder (patent owner) of an *IP assets* is paid remuneration for the creation of an *IP assets* in accordance with the legislation of the Kyrgyz Republic.

33. Remuneration to an employee for the establishment of an *IP assets* is paid:

- in case of obtaining a patent in the name of a HEI or RI;
- from the date of issuance of the patent.

34. Remuneration for the use of the *service IP assets* is paid to the employee:

- in case of use of *IP assets* in HEI and RI;
- in case of use of *IP assets* by third parties, the rights to which belong to the HEI and Research Institute, subject to receipt of revenue by the HEI and Research Institute.

The amount and procedure of payment of these types of remuneration are determined in accordance with the legislation of the Kyrgyz Republic and regulations of the HEI and RI.

35. In case of use of *IP assets* by third parties, the rights to which belong to the HEI and RI, the employee is paid out on the basis of the license agreement, rights transfer agreement or other relevant agreement subject to state registration with the authorized state body in accordance with the legislation of the Kyrgyz Republic.

36. The amount, conditions and procedure of payment of remuneration to the author for his service invention (*service IP assets*), utility model and industrial design are determined by the agreement between the author and the employer.

37. In case of failure to reach agreement, the decision is made by the court.

If it is not possible to measure the contribution of the author and the employer to the creation of the service invention, utility model or industrial design, the author is recognized as entitled to half of the benefit that the employer received or should have received.

7. Final provisions

38. The *service IP assets* registered in accordance with the established procedure have the status of intellectual property of a HEI and RI.

Originals of all protection documents on state registration of *service IP assets* should be kept in the HEI and RI.

39. This Regulation is developed in accordance with the current legislation of the Kyrgyz Republic.

40. In case of introduction of changes in the legislation of the Kyrgyz Republic in the field of intellectual property, the present Regulation is subject to change as well.