IM/IS POLICY

INTELLECTUAL PROPERTY AND COPYRIGHT POLICY
## Contents

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1. **FOREWORD**

1.1 **Copyright**

South African Copyright Act (No. 98 of 1978) states that, any original work is eligible for copyright protection. Originality refers to the fact that the author must have created the work through the application of the author's own creativity and labour.

In addition, the work that is to enjoy copyright protection must have been reduced to a material form. In other words, mere ideas are not considered protectable by way of copyright. The author must have written down or recorded the creation in a material form for copyright to come into existence.

As technology has progressed, the types of works eligible for copyright have expanded to include new creations which were previously unknown, such as computer programs and broadcasts. In terms of the South African Copyright Act (No. 98 of 1978), the following works, if original, are eligible for copyright protection:

- Literary works (e.g. novels, poems, textbooks, letters, reports, lectures, speeches)
- Artistic works (e.g. paintings, sculptures, drawings, photographs)
- Cinematograph films
- Sound recordings
- Broadcasts (electromagnetic transmissions intended for reception by the public)
- Published editions of books (usually the first print of a literary or musical work)
- Computer programs (instructions directing the operation of a computer)

1.2 **Intellectual Property**

The Intellectual property policy of MTPA governs the intellectual property rights of an individual employed by MTPA. Under normal circumstances an individual who invents an item in his own time and place retains all rights to the patent. If, however, the same individual invents the same item during the course of a working day, the rights to that item vest with MTPA.

Generally speaking the author of a work is regarded as its first owner, but there are exceptions to this rule, which should be borne in mind. For example, in the case of literary works or photographs made by an author or photographer while working for a newspaper or magazine, ownership belongs to the publisher for those parts of the works that he uses, the unused work remains the property of the author or photographer. If someone is commissioned to write an article, on being paid for writing that article, copyright passes from the original author to the person commissioning it.

Intellectual property falls under four separate headings: **patents, trademarks, designs and copyrights**. In each case the regulations and requirements for the various types of intellectual property are governed by Acts of Parliament.
2. SCOPE

This policy is applicable to the MTPA and all its employees as well as to any person requiring access to information that is held by the MTPA.

Exceptions to authorship of Copyrighted work in terms of the South African Copyright Act.

The author is usually regarded as the first owner of the work. However, there are exceptions to this. These include:

- Literary or artistic works made by an author when employed by a newspaper, magazine or the like. In this case, authorship vests in the publisher. However, authorship vests in the author for the unused sections.
- If someone commissions and pays for the taking of a photograph, painting or drawing of a portrait
- If someone commissions and pays for the making of a film or sound recording
- If the work was created in the course of an author’s employment, the authorship vests in the employer

3. POLICY STATEMENT

3.1 Rights of the MTPA to Inventions

An invention belongs to the MTPA -

1. if it is made within the course and scope of employment or the professional activities of a member of staff; or

2. if it is made with significant use of MTPA resources; or

3. unless the MTPA has assigned ownership to a third party.

3.2 Rights of the MTPA to copyrightable works

1. The MTPA requires and holds copyright in work produced by staff in the course of their employment. The MTPA will hold and retain copyright in work produced to support or to be used in its core and/or support functions; and in other respects recognises and assigns the copyright to the authors of work in copyrightable works.

2. The MTPA recognises that there may be cases where joint ownership of copyright in copyrightable works by the MTPA and the author will be appropriate, for which prior agreement between the MTPA and the author(s) must be entered into wherever possible to govern the rights and obligations of the parties to the works. Examples of such cases would be where one of the authors is not a staff member and the other(s) is (are).
3.3 General Provisions

Trade Marks

No trade mark associated with the MTPA or any MTPA activity may be registered without obtaining prior permission from the MTPA.

Distribution of Research Property

1. The MTPA encourages the distribution of tangible research property that arises from research (just as it encourages the publication of all research for peer scrutiny) on appropriate terms, and provided that this distribution does not conflict with existing obligations.

2. MTPA employee wishing to make such distribution must inform the MTPA in advance. The MTPA must then
   i. evaluate the tangible research property concerned;
   ii. ensure that the MTPA is entitled to make such distribution; and
   iii. estimate its potential commercial value (including whether formal intellectual property protection should be secured prior to distribution);
   iv. advise on appropriate terms for such distribution; and
   v. supply a material transfer agreement or other appropriate agreement to govern such distribution.

4. PROCEDURE

4.1 General

1. All Intellectual Property issues, including any provisions in this Policy which require further clarification, must be referred in the first instance to the IM/IS Unit, which is responsible for administering this policy.

2. When it first becomes apparent that Intellectual Property has been developed which might be subject to this Policy, the inventor must immediately notify the IM/IS Unit.

3. The IM/IS Unit must evaluate the Intellectual Property concerned for factors including but not limited to patentability, third party rights, market potential, possible applications, inventor ship, available budget and stage of development, and, in consultation with the inventor, make a decision on whether and where to file a patent application or seek other forms of statutory intellectual property protection, develop a marketing strategy and use its best efforts to licence or otherwise exploit the invention concerned, guided by the objectives of this Policy. All such actions by MTPA must be made in reasonable time.
4. If the MTPA decides not to exploit certain Intellectual Property, or to discontinue exploitation of certain Intellectual Property, the inventor must be notified and will be entitled to request that the MTPA assign all its rights in the invention to the inventor, who will be free to exploit the invention independently of the MTPA, at the inventor’s own cost. (Note: exploitation using funds in MTPA research entity constitutes exploitation at the MTPA cost.)

   i. The MTPA is entitled to be reimbursed for any costs it has incurred in exploiting the invention concerned.

5. Each Manager must notify the IM/IS Unit of any visiting researchers in his/her Division/Unit who may develop, or be involved in developing intellectual property, so that an appropriate agreement is entered into with the visitor and the visiting researcher’s employer before the visiting researcher begins work at the MTPA.

4.2 Responsibilities of Inventors

1. An inventor must disclose the development of any Intellectual Property covered by this policy to MTPA as early as possible.

2. An inventor may be required to make assignment of certain Intellectual Property in writing.

3. An inventor is expected to co-operate with MTPA and assist in preparing, reviewing, signing, and abiding by the terms of all documents necessary for the exploitation of an invention (including but not limited to patent specifications, official forms, marketing material, technical descriptions, and confidentiality agreements and licence agreements).

4. In the event that a patent application is under consideration or pending, an inventor must maintain the confidentiality of the invention until the patent application has in fact been filed.

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8. In the event that a patent application is under consideration or pending, an inventor must maintain the confidentiality of the invention until the patent application has in fact been filed.

4.3 Dispute resolution

1. Any disagreements or questions of interpretation arising under this Policy must, at the request of any interested party, be taken to an umpire chosen by the staff member from a panel of three names provided by the IM/IS Unit.
2. If the matter concerned cannot be settled by the umpire an interested party may request that such matter be referred to a panel, whose decision is binding and final. The panel will be appointed as follows:

   i. One member by the author(s) or inventor(s)

   ii. One member by the Chief Corporate Support Officer

   iii. One member by the Chief Governance and Compliance Officer.

3. The umpire and the panel respectively may decide on the procedure to be followed at their discretion.

5. **Version Control & Approval**

   This policy is submitted and approved as indicated below.

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