



**KIBABII UNIVERSITY COLLEGE**  
(A Constituent College of Masinde Muliro University of  
Science and Technology)

**INTELLECTUAL PROPERTY  
MANAGEMENT POLICY**

**June, 2014**

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## **FOREWORD**

In today's knowledge economy, the importance of research and innovation for knowledge generation and technology transfer geared at enhancing national development as a component of Education for life has been embraced in the strategic plan of Kibabii University College. This realization has re-enforced need for investment in research, innovations and commercialization of products of research for the public good as well as contribute to the economic development geared towards realization of the vision 2030 in Kenya and The constitution of Kenya 2010.

Kibabii University College is composed of a number of faculties and schools that are engaged in research, invention, innovations and generation of new knowledge in line with its motto "Education for development". The purpose of developing the policy on management of Intellectual Property is to assist researchers, research managers and Kibabii University College, in ensuring that they have access to best practices for the identification, protection and management of Intellectual Property and, therefore, to maximize the benefits and returns from public investment in research. Furthermore, the implementation of this policy is expected to enhance the visibility of Kibabii University College and also to drastically reduce on lose of opportunities that may arise from failure to protect innovations and research outputs by inventors and the institution as whole.

Kibabii University College, therefore, affirms its commitment to provide a conducive environment that supports innovation, knowledge creation and technology transfer in line with the national development agenda. The University College further acknowledges the importance of and shall support the commercialization of products of research and innovation for the benefit of society, the inventor and the institution.

Professor Isaac IparaOdeo

**Principal, Kibabii University College**

## **Abbreviations**

<b>IPM</b>	Intellectual Property Management
<b>IA</b>	Intellectual Asset
<b>IAs</b>	Intellectual Assets
<b>IP</b>	Intellectual Property
<b>MTA</b>	Material Transfer Agreement
<b>MTAs</b>	Material Transfer Agreements
<b>SME</b>	Small and Medium enterprises

## **Definitions**

**“Academic Board”** means the legal body that oversees the development and implementation of research, innovations and intellectual assets of the University College

**“Intellectual Assets”** refer to all intellectual products that are created by the personnel working in Kibabii University College. In specific terms these are items in which personnel have:

- i. Put their ideas;
- ii. Taken particular decisions in respect of different choices;
- iii. Thought of ways to solve particular problems, etc.

**“Intellectual Property”** means all subject matter capable of being protected by patents, copyright, design, database rights, topography rights, trade mark, plant breeders rights know how and all other intellectual or industrial property rights in each case whether registered or unregistered, and including applications or rights to apply for them together with all extensions, divisions, continuation, continuations in part and renewals of them and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world.

**“Copyright”** is defined as the exclusive right of a creator/owner of an original creative work to prevent unauthorized copying. The owner of the copyright in a work has the exclusive right to copy the work. Issue copies of the work to the public, rent or lend the work to the public, perform, show, or play the work in public, communicate the work to the public and make an adaptation of the work or do any of the preceding acts in relation to an adaptation.

**“Commercialization”** means any form of exploitation of the IP including assignment, licensing or the disposal of any other interests, whether in return for cash or payment in kind or any other form of value.

**“External Body”** means a company, government body, registered charity or any other entity or individual who is not a University College employee.

**“Individual”** means the inventor, author or creator of IP who is an employee of the University College or students at the time of invention, authorship or creation.

**“Intellectual Property Management Unit”** means the unit in the University College having responsibility for identifying, protecting and commercializing IP.

**Innovator** Scientist, artist, software developer, researcher, staff (both teaching and non-teaching staff on full time or part-time or adjunct or contract terms), undergraduate and postgraduate student.

**“Patent”** means giving exclusive rights to commercially exploit ‘the invention’ for the life of the patent. This is given for a product or idea that can be manufactured. A patent is granted for any device, substance, method, or process which is new, inventive or useful.

**“Registered Design”** - the inventor has exclusive rights to use the design specified in the registration (e.g. logo) and specifies the coverage. The owner of a registered design has exclusive rights to authorize other people to use that design

**“Research Results”** means the results arising from an individual’s research including details of any IP, results or source code.

**“Scholarly Materials”** includes textbooks (unless such text books were developed using University College administered – funds), academic journal articles, conference papers and related presentations, theses and dissertations, popular non-fiction, novels and poems, but excludes any such materials or part of them which can be defined as teaching material or University College materials. For the purpose of this policy, computer software, firmware and database are also excluded from this definition.

**“Spin out Company”** means a company established with a view to commercializing IP originating from the University College (whether on its own or with other IP).

**“Students”** mean any person registered or matriculated as a student of the University College, whether for an undergraduate or postgraduate course.

**“Teaching Materials”** means any materials created within the University College or created on behalf of the University College that are intended to be used or accessed by students for the

purpose of their course of study including course guides, handouts and presentation materials (including lecture notes, slides and other audio-visual materials) instruction manuals and assessment and examination questions.

**“Trademark”** - gives the legal right to use, license, or sell the trade mark item for goods and services for which it is registered

**“University College Materials”** means any type of work produced for administrative purposes, including but not limited to promotion and marketing of the University College courses, students and staff recruitment, papers for any internal committee or similar body, material included in any University College handbook for employees or students or any other University College purpose and any item created by an employee of the University College whose job description specifically includes the creation of printed or electronic materials.

**“University College Resources”** means any form of funds, facilities, including equipment and consumables, use/supply of heat, light or power otherwise purchased or paid for by the University College or other University College subsidiary; or another employee’s contracted hours of work.

## 1.0 Introduction

Generators of Intellectual Property are considered ‘inventors’ and together with the University College have rights to that property. The Intellectual Property Rights provide the legal basis for recognition of ownership of Intellectual Property. The Intellectual Property Management Policy (IPM) covers the handling of Intellectual Assets and Intellectual Property of the University College or which are generated by the personnel of Kibabii University College.

The purpose of the IPM policy is to encourage and support those who wish to create or exploit such products to do so. The expectation is that by acting as an incentive, implementation of the IPM policy shall galvanize innovation and creativity among both staff and students for the public good, and when commercialized generate income for the innovator and the University College. Therefore, Kibabii University College shall endeavour to foster the development of its inventions and discoveries through patenting and licensing to industry in particular and generally to the private sector. The University College, therefore, is committed to managing efficiently and effectively any Intellectual Property arising out of staff and student work.

The IPM policy be interpreted in line with the laws of the republic of Kenya that specify the asset to be protected, other requirements such as the country of residence of the originator (s) and the owner of the asset.

In the context of this policy, **Intellectual Assets** shall include the following items:

- (i) Employment Contracts
- (ii) Collaborative Agreements
- (iii) Confidentiality Agreements
- (iv) Laboratory Notebooks/Notes/Logbooks
- (v) Industrial training notebooks
- (vi) Industrial attachment / school attachment notebooks
- (vii) Field Data/Notes
- (viii) Licenses – reagents, software
- (ix) Databases
- (x) Software/Simulations
- (xi) Plant and Animal varieties

- (xii) Information/Data from Third Parties
- (xiii) Other “tangible” items e.g. cell lines and monoclonal antibodies
- (xiv) Copyright issues
- (xv) Institutional Policy
- (xvi) International Agreements

In addition, the policy has been developed under the general framework of the University College Vision, Mission, and Motto and Core Values.

## **2.0 Rationale**

There is need for the University College to have an intellectual policy to:

- (i) enhance collaboration with other institutions and individuals;
- (ii) protect the interest of the University College
- (iii) promote demand driven research
- (iv) generate income for the University College
- (v) take care of the conflicting interests of the various stakeholders
- (vi) promote creativity and innovation
- (vii) expedite knowledge and technology transfer
- (viii) reward staff for invention and protect their interests
- (ix) ensure equitable sharing of commercial benefits
- (x) spell out obligations of all stakeholders in IP generation and commercial utilization
- (xi) expedite commercialization of research outcomes through incubation and industrial collaborations.

## **3.0 Aim of the Kibabii University College Intellectual Property Management Policy**

The aim of this policy is to stimulate and support innovative thinking among students and staff, and to enable ownership and efficient management of intellectual assets and innovations produced at Kibabii University College. In addition, implementation of the IPM policy is envisaged to increase income arising from research activities, as well as increase the contribution of Kibabii University College to the wellbeing of society.

### **3.1 Objectives of Kibabii University College Intellectual Property Management Policy**

- (i) To support and promote innovative ideas that can be transformed into useful products for the public good
- (ii) To support the management of Intellectual Property of the University College
- (iii) To support and promote knowledge transfer mechanisms to students and the wider public
- (iv) To promote economic activity arising from the products of research and innovation

### **4.0 Applicability and Compliance**

- (i) All staff, students, fellows, collaborators, persons and institutions shall be required to comply with the provisions of this Policy.
- (ii) Where a collaborator is already subject to the terms of an Intellectual Property policy of his or her parent institution, he or she shall inform the University College of such an obligation in a timely manner. The University College shall then proceed either to negotiate a waiver of the parent institution's policy or to agree to the waiver of the terms of this Policy. Where issues arise which are not covered by the terms of the agreement, this Policy shall be applicable.

### **5.0 Governing Laws**

- (i) This policy shall be interpreted in a manner consistent with other University College Policies and regulations,
- (ii) All applicable Laws of the Republic of Kenya, and
- (iii) Where necessary, the laws of other countries may be applicable.

### **6.0 Scope of the Policy**

The Policy shall cover but not limited to the following: Patent; Trade Mark and Service Mark; Copy rights and Neighboring rights; Industrial Design; Utility Model; New Plant Varieties; Trade Secrets and Know how; Integrated circuits or layout designs; Geographical Indications; Tangible Research Property (TRP) and genetic resources including living organisms; Traditional Knowledge and Folklore; Domain names; Sound or visual recordings; Multimedia presentations; Models, machines, devices and prototypes; Designs, drawings and plans; Apparatus, instrumentation; Computer programs and databases, Biological material or specimen; Chemical compounds and other composition of matter.

## **7.0 Guiding Principles**

The following guiding principles shall apply:

### **7.1 Support and Promote Innovative Ideas that can be transformed into useful Products for the Public good**

The policy recognizes the importance of a well streamlined procedure where all the research activities and innovations are documented. The policy, therefore, stipulates that the University College shall:

7.1.1 Develop an inventory/database of all research activities and innovations:

- (i) University College employees engaged in approved research at the University College shall maintain a Logbook / Notebook of their findings which shall contain the information set out in the format approved by the University College Research Council, and submit a copy thereof to the Intellectual Property unit through their Supervisor/Head of Department.
- (ii) Researchers shall be required to complete the Intellectual Asset Identification Form approved by the University College Research Council and submit a copy thereof to the Intellectual Property unit through their Supervisor/Head of Department.
- (iii) Research Reports including theses or dissertations approved for the award of University College Degrees or Diplomas shall constitute Intellectual Assets and shall be deposited with the Kibabii University College Library and any other appropriate Libraries upon protection under the relevant law shall be transformed into Intellectual Property.

7.1.2 Provide entrepreneurial skills and raise awareness through training of students and staff on Intellectual Assets and Intellectual Property Rights

7.1.3 Solicit for innovative ideas from students and staff and support promising ones

### **7.2 Support and Strengthen Intellectual Property Management and Coordination at the University College**

The University College is committed to managing efficiently and effectively any Intellectual Property arising out of staff and student work, and therefore, shall:

7.2.1 Establish an Intellectual Property Management unit (IPMU):

- (i) Headed by an Intellectual Property Manager
- (ii) Establish an Intellectual Property Committee as a technical committee of the Academic Board to assist in the implementation of the IPM policy
- (iii) The roles of the Principal and the Intellectual Property management unit shall be defined as follows:
- (iv) The Principal shall:
  - a) Be responsible for administering this policy and managing University College Inventions, including technological know-how that may be licensable but may not be patented or patentable
  - b) Authorize exceptions to this policy that she/he determines to be in the best interest of the University College.
- (v) The Intellectual Property Management unit shall:
  - (a) Create and update a central database where the information on intellectual assets are recorded and accessed by interested persons
  - (b) Receive copies of Laboratory Notebooks and Asset Identification Forms for purpose of maintaining an inventory thereof
  - (c) In liaison with the Scientist/ Inventor/Author, evaluate the Intellectual Assets to determine their potential for transfer to the public/private sector
  - (d) Draw up an action plan for the relevant steps, from final development of the innovation to distribution up to sharing of proceeds
  - (e) Identify who shall perform the additional development
  - (f) Identify who shall distribute the innovation
  - (g) Assess the costs associated with the final development and distribution
  - (h) Build an impact evaluation method in the distribution process
  - (i) Collect and develop a database on employment contracts, Student Exchange Agreements, Linkage and Collaborative Agreements, Funding/Donor Agreements, Licenses'/Material Transfer Agreements (MTAs), National and

International Laws on the Intellectual Property used or produced by the University College, and Research Outputs/Products

- (j) Design and review periodically an Intellectual Property Data Management System for the University College
- (k) Establish a working relationship with the supervisor or persons in the custody of Intellectual Property Related Information
- (l) Utilize National and International Legal Instruments in their work
- (m) Initiate commercialization of innovations through to product development partnerships with the private sector
- (n) Train staff and students on Intellectual Property/Assets issues
- (o) Analyze reports from researchers on Intellectual Assets/Property to determine ownership
- (p) Oversee the implementation of Intellectual Property Management Policy and assist in the review of the policy
- (q) Advise the University College on the management issues related to Intellectual Assets/Property

7.2.2 The IPM unit shall work closely with the Research & Innovations office to identify Intellectual Property issues in research proposals and products of research and innovations including those that may be of interest to the private sector

7.2.3 The University College shall protect the rights of innovators and the institution. This shall be through:

- (i) Provision guidelines for ownership, registration, patenting and commercialization (ventures, spin-off companies) and disclosure. (Researchers shall seek the assistance of the Intellectual Property unit in applying for registration of copy right, patents, designs or trademarks under the relevant laws or when trying to commercialize their innovation(s))
- (ii) Any discovery or invention that satisfies the following circumstances shall belong to the University College (hereinafter referred to as: University College Inventions):

- (a) Results from research carried by, or under the direction of any employee of the University College which is supported by University College funds or funds controlled or administered by the University College, or
  - (b) Results arising from an employee's duties with the University College, or
  - (c) Has been developed in whole or in part through the utilization of University College resources or facilities not available to the general public.
- (iii) Any Intellectual Property created by a University College employee having an honorary appointment at any other institution during that appointment shall lie with the employer who pays the salary of that employee
- (iv) Honorary researchers who are not employed by the University College are generally required to transfer any Intellectual Property they create in the course of their honorary activities to the University College subject to the terms and conditions of their honorary contract. Sharing of proceeds from such Intellectual Property shall follow the University College established guidelines for its staff
- (v) University College staff funded by outside organizations are required not to make arrangements with such bodies that conflict with their obligations to the University College regarding the University College's rights to the Intellectual Property ownership under this policy
- (vi) University College employees and students (including postdoctoral appointees, graduate and undergraduate students) shall disclose any University College Inventions to the University College prior to disclosure of such discoveries or inventions through publications, presentations or communications with third parties including research sponsors.
- (vii) Notwithstanding (vi) the disclosure may be required to comply with legal and/or contractual obligations owed to governmental or non-governmental research sponsors.

- (viii) University College staff shall not disclose University College inventions in the course of performing outside work for reward unless and until the University College has had the opportunity to take the steps necessary to protect University College Inventions through patent or otherwise.
- (ix) Students who create innovations or Intellectual Property and are not University College staff shall own any such Intellectual Property in addition to being inventors, except under the following circumstances:
- a) In the case of sponsored students where the sponsoring body has claim to the Intellectual Property
  - b) In the case of sponsored research by an external body
  - c) The Intellectual Property was developed during their University College course of work with substantial utilization of University College resources as determined by the Academic Board.
- (x) Notwithstanding (ix), students shall have the option of assigning any Intellectual Property to the University College whereby they shall be granted the same rights as any employee inventor as set out in this policy.

#### 7.2.4 The University College shall provide guidelines for reward of innovators and sharing of financial proceeds

- (i) Any discovery or invention arising from joint collaboration between the University College or its employees, and other institutions shall proportionately belong to the parties.
- (ii) For the avoidance of doubt, “revenues” shall not include funds received for research support.
- (iii) The university costs, for filling, processing Intellectual Property applications and maintaining these rights shall be reimbursed from gross revenue prior to distributions for rewarding of innovators and sharing of financial proceeds

(iv) The University College shall recover all direct expenses incurred for the patenting, protection and licensing of each University College invention from the proceeds before distributing the net proceeds remaining among the inventor(s), major administrative unit and the University College as follows:

<b>Innovator (s)</b>	<b>School/ Faculty/ Department/ Laboratory/ Library</b>	<b>University</b>	<b>Intellectual Property Management unit</b>	<b>Endowment fund</b>
40%	25%	20%	10%	5%

(v) The University College shall review the modalities for sharing proceeds of licensing among the inventor/innovator(s), the inventor's major administrative unit, and the University College from time to time.

(vi) The innovator(s) shall continue to receive his/her share of the royalties even after leaving the University College. In the event of death of the innovator, the legal successor shall continue to receive the royalties.

(vii) The royalty income allocated to innovators shall be paid to them directly as personal income.

### **7.3 Support and Promote Knowledge Transfer Mechanisms to Students and the Wider Public**

The University College is committed to adhere to good practices and ethical standards in the transfer of knowledge to the users. To this end, the University College shall:

#### **7.3.1 Develop, operationalise and review periodically guidelines on the use of Intellectual Property for the public good e.g. copying/reproduction**

(i) The University College shall, in appropriate cases, utilize Material Transfer Agreements (MTAs) for purposes of exchanging materials for research or development of innovations.

(ii) Develop and update periodically the MTA

7.3.2 Require that a copy of any Intellectual Assets/Intellectual Property produced by staff and students shall be deposited in the University College library and the IP unit

#### **7.4 Promote Economic Activity Arising from the Products of Research and Innovation**

The IPM policy provides the basis for the University College to take advantage of any Intellectual Property arising out of innovative research activities in terms of commercialization. To achieve the commercialization of Intellectual Property, the University College shall:

7.4.1 Support the development of small and medium enterprises (SMEs) (e.g. spin-off companies) arising from promising innovations

7.4.2 Develop, operationalise and review periodically guidelines for commercialization of Intellectual Property including licensing and joint ventures with private sector, and spin-off companies. The guidelines shall clearly stipulate the equity interest of the inventor/originator.

#### **8.0 Implementation**

- i. This policy shall be implemented and reviewed periodically by the Academic Board.
- ii. This Policy shall be implemented or supplemented in any way consistent with its terms and those of other University College policies.
- iii. In the event circumstances require any exception to the terms of this Policy, such exceptions shall require the consent of the Principal. The Principal shall, when practical, seek the advice of the University College Council prior to approving any exception to the terms of this Policy. When prior consultation is impractical, the Principal shall promptly notify the University College Council of any exceptions to the terms of this Policy.
- iv. This Policy shall not apply to existing written agreements between the University College and/or any external organization or individual, concerning the development, legal protection, or commercialization of specific Intellectual Property, and entered into prior to the date on which this Policy is adopted by the University College Council.
- v. If an existing written agreement is renewed, revised, or amended after the date on which this Policy is adopted by the University College Council, reasonable attempts shall be

made to conform such agreement with the requirements of this Policy as of the date on which it is renewed, revised, or amended.

- vi. After adoption of this policy, the University College Council shall be responsible for drawing out periodical implementation guidelines or procedures.

### **9.0 Dispute resolution**

- (i) Any party not satisfied by the decision made by Intellectual Property Management unit shall have the right to appeal to the Principal upon which he/she shall appoint a five member independent panel comprising personnel knowledgeable within the discipline
- (ii) From the five, the principal shall appoint the chairperson
- (iii) The panel shall elect its secretary
- (iv) The panel shall hear both parties to the dispute and any other person they deem fit
- (v) The panel shall then make a decision and advise the principal who shall communicate it to the parties
- (vi) In the event of any party being dissatisfied with the decision, he or she shall have the right to appeal the full University Council through the chairperson of the Council.
- (vii) The Council shall set up an independent panel to hear the appeal and report back to Council with its recommendations within one month from the date of receipt of the appeal and Council shall determine and communicate its decision on the matter within one month from the date of receipt of the panel report.

### **10.0 Ownership of equipment and infrastructure**

Any equipment bought / constructed under a funded research contract or obtained through collaboration research shall remain the property of the University College on completion of the contract or as agreed by the parties.

### **11.0 Policy Review**

- (i) This policy shall be reviewed after every two years. The process of review shall involve the writing of notices of such review to Heads of Departments of the University College requiring them to forward their suggestions or concerns in the policy document that members of their departments may have. After receiving the suggestions, the Intellectual

Property Committees shall convene and critically look at the sections and clauses that may have been suggested for review.

(ii) The Intellectual Property Committee shall then make its recommendations to the Academic Committee for consideration.

(iii) The Academic Board shall then make consideration of the recommendations from the Intellectual Property Committee and make recommendations to the University College Council.

(iv) Any changes shall only become effective from the date they are approved by the University College Council.

## **12.0 Notification**

The Academic Board shall inform all persons subject to this Policy of its terms as soon as reasonably possible after its adoption and at regular intervals thereafter.

**Date of Commencement:** DD/MM/YYYY.

## **References**

Harvard University (1975). Intellectual property policy (Amended 2010)

Kenyatta University (2012). Intellectual property policy

Makerere University (2008). Intellectual Property Management Policy

Mount Kenya University (2013). Intellectual property policy (Revised 2013)

New York University (2012). Intellectual property policy

University of Nairobi (2006). Intellectual property policy (Revised 2013)