Sveriges lantbruksuniversitet
Swedish University of Agricultural Sciences

SLU ID: SLU.ua.2016.1.1.1-3342

Subject area: Research and doctoral education

Document type: Policy Decision-maker: Head of University Administration Organisational unit: Vice-Chancellor's Office Reference: Linnéa Littorin	Decision date: 28/09/2017 Effective as of: 28/09/2017 Valid until: Further notice To be updated by: 1/10/2022

Document(s) repealed: –

Annex to: Decision on intellectural rights policy, reg. no 2016.1.1.1-3342

Intellectual property rights policy

Introduction

The aim of this policy is to clarify the rules and regulations for intellectual property rights (IPR or IP) and to make clear the university's ambition of a carefully prepared strategy on this work. The university has a particular responsible to encourage, facilitate and uphold innovation. The EU, and certain other funders, require and expect higher education institutions (HEIs) to focus on innovation and valorisation of research.

This policy clarifies SLU's general approach to employees' intellectual property rights. Existing rules in this field are outlined in order to make it easier for SLU's research to be of use to the rest of the world. SLU wants to ensure that intellectual property rights go to the originator in a correct manner while continuing to strive for openness and continued sharing of knowledge.

Intellectual property rights involve rights that have been or can be protected as intellectual property in accordance with current legislation, e.g. patents, copyright, trademark, design protection and plant variety rights.

The starting point is that intellectual property rights created in relation to university education and research will be given to the originator. This is based on the Act on Copyright in Literary and Artistic Works, the Act on the Right to Employees' Inventions, custom and not least the university's own approach. As a public authority, the university rarely has an interest in taking over employees' intellectual property rights. On the contrary, it encourages commercialisation, development and innovation. Rules and regulations vary depending on the type of innovation or intellectual property rights. The result, however, is often that the individual is the right holder, not the university.

2. Policy

The following policy applies at SLU when concluding collaboration and contract research agreements.[1]

- SLU researchers must be able to continue researching the findings generated.
- SLU researchers must be allowed to publish their own research findings.
- Publication of personal research findings can be delayed up to a maximum of three months, or six months, in the case of possible patent processes.
- The originator must own the personally generated research findings. Other rules may apply in the case of fully funded contract research. If an external party patents research findings owned by an originator at SLU as a result of an agreement, the originator must always receive a fair reimbursement.
- A licence to use research findings owned by an originator at SLU can be granted, provided there is a fair reimbursement.
- Research findings owned by an originator at SLU may be transferred as a result of an agreement and if reimbursement is paid in line with market conditions.

3. A short summary of different forms of intellectual property rights

Copyright, ideas and patents

The Act on Copyright in Literary and Artistic Works (1960:729) gives originators the right to decide how their works will be used. The originator's sole power over their work – how to use and distribute it – arises automatically and without formalities when the work is created, on condition that the work is an artistic or literary work that meets the requirements of originality, individuality and independence (threshold of originality). At SLU, scientific and popular science texts are examples of literary works. Landscape architects' designs and equine scientists' dressage programmes are also examples of artistic works.

The facts and ideas included in the work cannot be copyrighted – only the originator's personal way of expressing these ideas through the content of the work. Example: a "business model". The model itself is not copyrighted, but the document where the originator has described their business model and perhaps drawn a organisation chart, etc., is a work protected by copyright. Ideas are instead best kept through concealment, which in itself is an efficient way of protecting intellectual property rights.

[1] For the purpose of this policy, contract research is defined as needs-driven research or assignments that require scientific solutions to a problem defined by companies, public authorities or organisations. Contract research is paid in full by the client in accordance with SUHF's (the Association of Swedish Higher Education) calculation model for full compensation. Collaboration research means research carried out in collaboration between academia, institutes and companies, where all parties in some way actively contribute to the research. In regard to collaboration research, companies can contribute in kind, while research conducted by academia can be (partly) funded by a governmental research funding body, the EU, etc.

The originator has financial and moral rights[2]. Moral rights cannot be transferred or licensed, but the originator can in some respects relinquish them through agreements. The financial rights, however, can be transferred or licensed to someone else. If several originators have joint responsibility for a work where their individual contributions cannot be distinguished, they share rights to the work.

Sweden is party to the Berne Convention, which means that Swedish copyright in principle corresponds to international law.

If an invention involves a *technical solution*, you can apply for a *patent*, i.e. exclusive rights by law. If a patent application is to be approved, a prerequisite is that the invention is new, i.e. has not been previously announced or published. Its design may not resemble existing technical solutions too closely. That is why the issue of concealment is important when applying for a patent.

A patent does not automatically apply in other countries. However, a Swedish patent can be recognised by patent offices in other countries after an application has been submitted. The fact that a Swedish patent has been approved does not affect the news value. This is regulated in the Paris Convention for the Protection of Industrial Property, which includes patent protection, trademarks and design (it also protects against unfair competition). For uniform European protection, a patent application can be submitted to the European Patent Office, EPO.

Particular computer program information

Section 40 a of the Act on Copyright in Literary and Artistic Work states that the copyright of a computer program created by an employee as part of their work duties, or based on instructions from the employer, is transferred to the employer unless another agreement has been made.

The term “computer program” has been defined in EU directives, and since the Swedish Act on Copyright in Literary and Artistic Works must be interpreted in accordance with EU legislation, that definition applies. According to the definition, the term ‘computer program’ shall include programs in any form, including those which are incorporated into hardware. This term also includes preparatory design work leading to the development of a computer program, provided that the nature of the preparatory work is such that a computer program can result from it at a later stage.[3] This means that the term “computer program” can be defined in many different ways. According to TRIPS[4], both the source code and object code are protected as literary works in accordance with the Berne Convention.

[2] The originator’s moral rights must be mentioned when the work is made available to the public. In addition, others may not alter a work or use it in a context deemed offensive to the originator.

[3] Two directives apply within this field: Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (Infosoc); and Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (the computer program directive). The definition can be found under recital 7 in both directives.

[4] TRIPS= the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Health Organization.

The protected rights, which go to the employer of the person who created the program, can be referred to regardless of how the program has been saved or how the code is expressed. This provision therefore clarifies that the program protection corresponds to the protection of literary works.

The protection concerns how the originator's idea is expressed in a computer program. As stated before, the idea itself, or the principles the program is based on, are not protected by copyright.

Section 40 a of the Act on Copyright in Literary and Artistic Works only affects the issue of copyright and has no connection to patentability. Computer programs cannot usually be patented. Because they are based on applying existing knowledge, they do not contain new technological solutions. The Act on the Right to Employees' Inventions (below) therefore rarely applies. Section 40 a of the Act on Copyright in Literary and Artistic Works (labour legislation) is an exception to the main rule that says that copyright always falls to the person who created the work.

Please note that "normal" copyright (i.e. not just the rule concerning employers in section 40 a) can apply to computer programs in regard to the parts that are artistic or literary works, i.e. the actual *design* – just like a fabric pattern or a painting.[5] In those cases, copyright does not directly go to the employer. However, in such cases, it must be defined what is a functional requirement (i.e. a necessary action that results in a function) and what meets the requirements for originality, independence and individuality. As stated above, only a work that is sufficiently independent (originality) can be protected by copyright.

Plant variety rights, design protection, trademark registration

One form of intellectual property rights that is particularly relevant to some SLU operations is plant variety rights. They are regulated in the Act on the Protection of Plant Breeders' Rights (1997:306). According to Chapter 1, Section 1, someone who creates a new plant variety or their right holder (typically the company where a plant breeder is employed) may receive exclusive rights to use the plant variety. There are several levels of plant variety rights:

- EU plant variety rights – licensing for international marketing.
- National plant variety rights – licensing for national/regional marketing.
- Proprietary kind – licensing for limited national marketing.
- Unprotected variety – available for breeding through "Elitplantstationen" (preferably).
- Arranged in a national gene bank – available to the public for cost recovery.

At SLU, this is regulated in a local collective bargaining agreement[6] and in a decision by the vice-chancellor[7].

[5] The European Court of Justice calls this copyright in accordance with the Infosoc directive (2001/29/EG), unlike copyright according to the computer program directive (2009/24 EG).
[6] Minutes 21 September 2010, journal no. SLU ltj 11-748/10.
[7] Decision by the vice-chancellor on 4 September 2010, journal no. SLU ltj 11-748/10.

The Design Protection Act (1970:485) regulates **design**. Design protection does not include details of a product's appearance which are exclusively decided by the product's technical function. Registering design protection means that you have exclusive rights to the design. By registering, the designer or the person to whom the designer's rights have been transferred can receive exclusive rights to the design according to this act (design protection).

Design protection can only be given if the design is new and has a distinctive character. A design is considered new unless an identical design has previously been made public. According to the Design Protection Act, Section 2, paragraph 3, a design has a distinctive character if a knowledgeable user's overall impression of the design differs from the overall impression of every other previous designs made public.

A **trademark** is a form of designation of origin and always consists of characters that can be reproduced graphically. Usually, trademarks are words, but they can also be names, letters, figures, numbers or the shape of a product, provided that the characters are distinctive.

A designation of origin is considered distinctive if it is possible to discern products or services provided by a business from those provided by another business. A lack of distinctiveness can be because a designation of origin only consists of descriptive characters or terms (e.g. chair, sausage, Linnéa's Flowers, Fun Things), or if it has become a commonly used term for the product or the service (e.g. Thermos).

Designations of origin are given exclusive rights if they are considered well established (known to a larger part of those affected). However, a person can also register a trademark before it is known publicly in order to receive exclusive rights. National trademarks are registered at the Swedish Patent and Registration Office. EU trademarks are registered at an EU agency called EUIPO (European Union Intellectual Property Office). If you are considering some form of international operation, it is a good idea to apply for an EU trademark. EU registration applies in all current EU countries, but also in any future EU countries. Norway and Switzerland are not EU members; if you want to protect your trademark in those countries, you must register it with their national authorities.

4. Intellectual property rights of academic staff

The Act on the Right to Employees' Inventions (1949:345) states that teachers at universities and higher education institutions have the right to their own inventions (this does not generally apply to the rest of the labour market). However, this act only applies to patentable inventions. Most universities have a broader interpretation of this term and also include other inventions and intellectual property rights. On the whole, SLU does not wish to, or has the possibility to, commercialise the inventions that are created as part of its operations. SLU therefore has a generous interpretation of the Act on the Right to Employees' Inventions.

If patent or design protection do not apply to the work, the Act on Copyright in Literary and Artistic Works often does. There are no rules for the employee's rights in regard to the employer, except for computer programs (see above). Instead, the social partners must agree on any transfer of copyright or similar rights. However, a "rule of thumb" has been developed in practice – the employer may use the employee's work *within their field of activities and normal operations* if the employee's work was created as part of their work duties or as a special assignment from the employer. The employer may only use the work in the way it was intended when created. Typical example: a journalist writes an article for a newspaper. The newspaper may then use the article for the current edition, but the journalist retains the rights to e.g. publish an article collection or edit the article.

Teachers are originators of the teaching material they develop during their employment. However, SLU has a right to use teaching material developed within the framework of the employment. The right to use means that SLU may *use the teaching material in normal SLU operations and for the teaching purposes that could be predicted when the teaching material was created.*

It also gives SLU the right to use teaching material for teaching purposes, and to make necessary changes and updates to the material. It also means SLU has the right to make the material available and to make copies of it, both printed and electronic, as well as to store the teaching material. SLU's right to use does not restrict the teacher's copyright of the teaching material, which means that they, among other things, can fully use the material for e.g. production of textbooks, articles or other scientific works. They are also allowed to use the material when teaching on behalf of another accountable authority.[8]

The expression "intellectual property rights of academic staff" can only be used when speaking about the employees' rights to have a secondary employment.

5. Students and employees

Both students and employees at SLU can be originators (i.e. have copyright) of literary and artistic works. Everyone is treated equally in this sense. SLU has no right to any inventions or similar that are created in relation to the students' studies, regardless of whether they are patentable or not.

6. Collaboration and contract research principles

In principal, and according to the intellectual property rights of academic staff, ownership of research findings[9] accrues to the researcher[10]. However, deviations may be necessary in some cases of collaboration and contract research, if the researcher agrees to it. If there is an agreement that affects the teacher's/researcher's (and SLU's) rights, an opposite party may also be given the right to use intellectual property rights in regard to both collaboration and contract

[8] The information above concerning the teacher's right to teaching material has not been tried in court, which means that the legal situation has not been fully clarified. The information in this document is SLU's interpretation of rights.
[9] There is no uniform definition of the term research findings.
[10] In this case, the term "researcher" also includes doctoral students, regardless of whether they are employed or not.

research. When it comes to contract research, practice is to transfer intellectual property rights to the client. Before the project starts, the participating researchers must always be informed of such conditions by the researcher responsible for the project.

Researcher consent

In some cases, collaborative agreements that SLU enters into state that the participating researchers, higher education institutions, departments or companies are expected to share the findings or transfer various rights to each other. In order for such an agreement to be made, the researcher must consent. If the researcher gives their consent, it means that they give SLU the right to enter into agreements that give one or several collaboration parties the right to use the researcher's findings. The researcher responsible for the project must ensure that each participating researcher signs a consent form before they take part of the project.

7. SLU Holding

Together with researchers, students and other parties within the land-based sector, SLU Holding's task is to create sustainable growth and development in society. This is done by initiating, supporting, developing and investing in knowledge-intensive innovations and business operations that are based at SLU, other higher education institutions or within the land-based sector.

SLU Holding works within the fields of innovation support and investments, covering the whole range from ideas to markets. The company has innovation and business advisors who are experts in IPR, financing, analysis and business management. They evaluate, formulate and develop the commercial potential of research findings from the university.

SLU Holding also provides business support for SLU's strategic plans and investments. SLU Holding is a separate limited company and is wholly owned by the Government through SLU.

SLU employees who have developed innovations or intellectual property rights and who wish to commercialise these can contact SLU Holding for help with the commercialising process or patent applications.

8. Authorship and citations

Authorship

Anyone who has contributed intellectually to an academic work, regardless of whether it is a written work or another type of intellectual work, must be properly recognised for their efforts by being listed as a creator of the work, or referenced or cited.

A central task for a researcher is to ensure that their research is published or otherwise made available to public. This responsibility lies with those who have substantially contributed to the published research. Authors of a publication are

considered the only ones who have made a substantial intellectual contribution to the work.[11]

Doctoral students are the primary authors of their theses and are generally considered main authors of publications based on these. Students are the primary authors of their degree projects. External funding, other non-intellectual contributions or a certain academic status are not reasons for being listed as an author of a publication. It is worth noting that not all co-authors of an academic work such as a publication will necessarily be considered inventors of possible patents developed from the research.

SLU's right to recognition

When research findings are published or presented, SLU should encourage its students and employees to properly recognise SLU as the provider of infrastructure and its education and research.

Third party rights

SLU employees must respect the rights of a third party, i.e. not infringe on someone else's intellectual property rights.

9. Patents in relation to publication

Researchers who intend to apply for patent right protection must consider delaying publication or publicly revealing their research findings until they have applied for a patent. Collaboration agreements should bring up the issue of delaying publication in those cases where patentable inventions may become important.

10. Right to share of proceeds due to valorisation

If an academic work becomes the object of commercialisation, the originators must share any proceeds, unless one of the originators has knowingly abstained from this, or if another agreement has been made between the originators/owners. The share of the proceeds should be proportionate to the immaterial contribution. This is usually regulated in agreements. If the agreement is made while research is carried out, the university's Legal Affairs Unit can help wording it. If an agreement is written during commercialisation, e.g. with a funding body, the researcher has personally assumed the rights and must personally formulate the agreement or enlist an external advisor or legal counsel. SLU Holding can also help.

11. Research data, documents and archiving

Documents established during research projects and within continual research activities are research material, regardless of how the research is being funded. They are subject to regulations in the Freedom of the Press Act (1949:105)

[11] The primary international standard for publication ethics are the Vancouver rules for authorship: The Recommendations for the Conduct, Reporting, Editing and Publication of Scholarly Work in Medical Journals, published by the International Committee of Medical Journal Editors (ICMJE). They were originally written for medical research, but today, they are applied to a number or different areas.

concerning public documents. The type of research or funding does not matter.[12] This applies to both administrative documents (e.g. funding applications, project descriptions, agreements, contracts, administrative correspondence), primary/basic material (anything used as basis for scientific processing, e.g. surveys, test results/measurements, interviews) as well as any material presenting the findings, e.g. final reports, publications, interim reports.

The Act on Copyright in Literary and Artistic Works applies to findings that a researcher has attained and written down in a literary work. Copyright does not apply to primary material (raw data). In order to verify research findings, primary material must be archived and preserved.

The starting point is that research data developed or used as basis for research findings must be open and accessible for use in academic contexts. SLU researchers are obligated to protect and preserve research data. Collected data is owned by SLU, and when it is arranged as a data set, it must be made available for review in connection with publication.

Appraisal and disposal must be done in accordance with current regulations.[13] In cases where there are conditions in agreements (typically for contract research) which limit management and access to data, all participants must be made aware of this.

12. Conflict and dispute resolution

Employees should contact the Legal Affairs Unit at the Vice-Chancellor's Office in case of disputes connected to these issues.

[12] However, secrecy may apply in some cases through the provisions in the Public Access to Information and Secrecy Act (2009:400).
[13] The Archives Act (1990:782), relevant parts of the National Archive Statutes (RA-FS) as well as SLU’s own guidelines apply here.