

# 1

---

## **RATIONALE, OBJECTIVES AND SCOPE OF THE POLICY**

### **1.1 RATIONALE FOR IP POLICY AT THE UDSM**

One of the core functions of the UDSM is to carry out and foster research with a view of providing solutions to the problems facing the Tanzanian society (and mankind) and hence improving the lives of the people. In order to be effective, such function requires the following prerequisites:

- i) Availability of sufficient research funding;
- ii) Existence of a system that would facilitate the movement of research results from the institution to end-users through application of research results. In between the University and the public there is an important link, namely: the private sector or industry.

The UDSM faces a number of challenges in its endeavour to realize the goals of its mission. First, the UDSM finds it difficult to effectively fulfil the above-mentioned function as well as other core functions, on account of the limited funding from government. Among the areas which are adversely affected by the government's inadequate funding is research. As a result UDSM's direct contribution to solving national development problems through research is abysmal or at best low. In the long-run, effective management of IP within the UDSM could lead to increased income to the UDSM and the researchers, thus supplementing the inadequacies from the government funding.

The second reason relates to the weak link between UDSM and the private sector or industries as exemplified by the small number of research undertakings at UDSM supported by the private sector/industry. It is a settled truth that the UDSM is endowed with highly trained and qualified personnel whose skills if directed towards research, innovation and consultancy could lead to inventions and research findings with enormous commercially value-added benefits. The benefits that could stem from effective harnessing of IP assets by the UDSM include, but not limited to, royalties from licensed patents or copyrights, research grants from university-industry partnerships and increased employment opportunities through establishment of incubation systems, spin-offs, start-up companies, or joint ventures.

In order for such benefits to accrue to UDSM, an elaborate policy that carter for the management of intellectual property and implementation structures of strategies of the policy need to be put in place. UDSM recognises and encourages the principle that IP assets created out of its research activities should be used for the greater public benefit. Commercialization is one of the most efficient means of promoting the widest possible dissemination and use of University IP assets to the public majority.

Thirdly, in the increasingly networked global society to which the UDSM is a party to, research collaboration between institutions or researchers from different institutions is becoming a common practice. In the absence of a defined policy on IP, the UDSM stands to lose since there will be no guidance to researchers from the UDSM on how ownership of research results will be regulated. Other universities may also hesitate to enter into collaborative research arrangements with UDSM in the absence of a clear and succinct obligation (reflected in an IP policy) on the part of the UDSM to honour the IP rights emanating from such collaborative research undertakings.

## **1.2 OBJECTIVES OF THE POLICY**

The objective of this policy is to provide a framework within which the

University IP is developed, managed, and effectively harnessed for the benefit of the University, the inventor/author and the general public. Specifically the policy seeks to:

- i) Ensure that University staff and students are aware of the issues of IP in their day to day activities.
- ii) Set a system of supervising and managing relationships with third parties who can apply the university IP assets commercially.
- iii) Encourage the recognition and identification of IP potentials within the UDSM and promote an entrepreneurial culture among UDSM staff and research students that fosters development through commercialization of IP arising from their activities.
- iv) Set an efficient system through which the commercial potential of IP assets can be effectively harnessed by the University.
- v) Set a system for rewarding those engaged in IP creation (in research and applied acts) and incentive necessary to commercialise their works;
- vi) Provide a means to commercialize and transfer IP in the form of applied arts and/or technologies created by University staff and students.
- vii) Define the obligations (rights and responsibilities) of parties involved in the creation of IP assets.
- viii) Ensure that the economic and other benefits resulting from commercialization of IP through UDSM are distributed in a fair and equitable manner taking into account the contribution made by the inventor/author and the institution as well as other stakeholders.
- ix) Ensure that UDSM complies with the applicable legal framework and regulations governing IP locally as well as internationally.

### **1.3 THE SCOPE OF THE POLICY**

#### **1.3.1 Scope of Persons Covered**

- a) Academic staff: Includes all academicians and visiting scholars or researchers employed by the university permanently or temporarily.
- b) Any person employed by the University who does not fit any other category. Where a student is also an employee, she/he is considered staff with regard to intellectual property as a result of his/her

employment and as a student with regard to other intellectual property created as a result of his/her student work. A full time non-academic employee who is also taking one or more courses is considered to be staff for the purpose of intellectual property.

- c) *Undergraduate, postgraduate and visiting students*: Any full-time or part time graduate and post graduate student regardless of whether s/he receives financial aid from the University or from external sources. It is the responsibility of students who are also employees of outside organizations to resolve any conflicts between this policy and provisions of agreements with their employers prior to committing themselves to any undertaking at the University that may involve the development or creation of intellectual property.
- d) *Post-doctoral researchers*: For the purpose of this policy although post-doctoral associates may be hired as staff, they are considered to be in the same category as post-doctoral fellows/trainees because their work is considered to be part of their training.
- e) *Former employees, students, staff and all others listed in paragraphs (a-d) above*: In the absence of any written agreement to the contrary, intellectual property generated while employed by the University shall be subject to ongoing rights and obligations as though the person is still employed by the University.
- f) *Independent contractors or consultants*: Persons hired by the University on a limited basis, for a limited purpose as specified in a contract, are considered staff with respect to any intellectual property arising from any use of University resources. The rights and obligations of the parties shall be determined by contract between the University and the contractor.

### 1.3.2 Scope of Intellectual Property Covered

Subject to the definition ascribed under this policy and the laws governing the same in Tanzania, and without limiting the generality of the term IP, this policy envisages the following intellectual properties:

- i Patents, trade and service marks, UDSM logo, industrial designs, copyright in literary and artistic works, new plant varieties, trade secrets, technology

based material in online courses and distance learning, research proposals, traditional knowledge and any other intellectual property-related assets that may be created by persons covered under this policy.

## 2

---

### THE POLICY ISSUES AND THE STATEMENTS

#### 2.1 AWARENESS RAISING OF INTELLECTUAL PROPERTY

Intellectual property is a relatively new concept in most higher learning institutions of developing countries such as UDSM. It is also an evolving concept whose principles and rules are continuously changing and adapting to new trends and developments in science, arts and technology. It therefore requires a defined approach geared at a massive awareness raising campaign and continuous training to keep abreast with new developments. To this end UDSM shall:

- i) Ensure that the awareness raising programme on intellectual property issues is set and is carried out at all levels through seminars, workshops and brief lectures by IP experts or any other available means as circumstances dictate.
- ii) Encourage each faculty/institute/college to incorporate intellectual property as one of the compulsory/elective courses in their respective course programmes.
- iii) Encourage and support the Intellectual Property Management Office (IPMO) to publish flyers and brochures which addresses issues of IP for circulation to all departments and members of the UDSM.

#### 2.2 THE DUTY TO DISCLOSE INTELLECTUAL PROPERTY

Effective management of IP at the UDSM requires mutual and supportive

relationship between UDSM and the persons covered under this policy. As such it is incumbent that the persons covered under this policy disclose to the relevant organ at the UDSM any information which they know that could potentially lead to intellectual property asset. Therefore, UDSM shall:

- i) Ensure that a system is put into place that will oblige persons covered under this policy to disclose any information with IP potentials which is acquired, developed or accessed while dealing or using UDSM resources.
- ii) Ensure, through the IPMO, that IP Disclosure Forms are designed and circulated to all departments/faculties, institutes and colleges.
- iii) Ensure that the information disclosed is kept confidential.
- iv) Ensure that those who access or deal with the information disclosed sign a separate undertaking which bind them not to disclose the said information to third parties unless authorised in writing by the IPMO in consultation with the researcher.

### **2.3 OWNERSHIP OF INTELLECTUAL PROPERTY (IP)**

One of the issues which presents and sometimes generates many disputes between the institutions and those employed or deal with it is ownership of intellectual property. UDSM is aware that the issue relating to ownership of IP requires balanced approach between the genuine interests of the two sides/parties involved.

#### **2.3.1 Ownership by UDSM**

In connection with the above, UDSM shall:

- i) Own all intellectual property that is made, designed, discovered or created by a member of staff, students or guest researchers who, in the course of their employment or undertaking of the research, use UDSM resources (including but not limited to funds administered or funded time by UDSM, facilities or equipment) in connection with its development.
- ii) Ensure that UDSM staff members, research students and visiting scholars, are made aware of their duty to assign and actually assign to UDSM all inventions, creative or artistic works or any other intellectual

property assets developed in the course of their research while at UDSM or anywhere using UDSM's resources.

### **2.3.2 Ownership Under Externally Sponsored Research**

In case where the research undertaking was partly or solely funded by the government or its department, sponsor or external funding agency, the ownership of IP shall be governed by:

- i) The terms of the grant or agreement as approved by the UDSM and in so far as such agreements are not in conflict with the provisions of this policy.
- ii) The terms of that undertaking and in whatever case the government shall reserve to itself the "march-in-rights".

### **2.3.3 Ownership by Researcher/ Inventor/Author**

- i) In cases where UDSM opts not to pursue IP protection with regard to specific research results or unreasonably delays the process leading to the protection of the said IP, the researcher shall have the right to claim ownership.
- ii) In dealing with the preceding provision, the inventor/author shall be obligated to make a written request to the UDSM and his/her rights shall only ensue upon the UDSM approval of such request in writing.
- iii) In all the cases above, the UDSM shall retain the right to a non-exclusive, non-transferable, irrevocable royalty free, worldwide license on the said IP asset for research and educational purposes.

### **2.3.4 Ownership by Students**

- i) Unless otherwise stated in this policy, students whose works have resulted into an IP asset to which UDSM has opted to pursue ownership shall be entitled to be named as an inventor/author as the case may be.
- ii) All postgraduate and undergraduates students who are registered with UDSM whether on short term or long term basis shall have the duty to assign to UDSM all IP assets arising from their research activities while at UDSM, or while being supervised by a UDSM staff member.
- iii) The students shall own copyright in the scholarly work subject to a royalty-free license to UDSM to reproduce and publish for academic purposes.

## **2.4 RIGHTS AND OBLIGATIONS OF THE UDSM AND AUTHOR/INVENTOR**

Intellectual property management involves continuous interaction and exchange of information which sometimes may not be easy to manage without having clear rules, rights and obligations of the parties concerned. Therefore UDSM stipulates the following policy statements:

### **2.4.1 Obligations of the Inventor/Author**

The inventor/author shall have the following obligations:

- i) To report and disclose research activities as soon as possible to the departmental dean, head, supervisor or unit administrator who shall subsequently relay the report to the IPMO.
- ii) To offer effective cooperation with the IPMO in evaluation of the research to assess its potential.
- iii) To disclose all potential conflicts of interest to the UDSM.
- iv) To abide by all commitments made in a license, sponsored research and other agreements, laws relating to privately funded research.
- v) To arrange for the safe keeping of all records and documents that is necessary for the protection of the UDSM's interest in the intellectual property.
- vi) To provide such assistance as may be necessary throughout the technology transfer process, to protect and effect the transfer of the intellectual property.
- vii) To take precautionary measures against public disclosure of the said research results until the evaluation process is completed and a decision whether to pursue IP protection or not has been made.

### **2.4.2 Rights of the Inventor/Author**

- i) In case the IP asset relates to a patent, the rights of the researcher shall be governed by section 17 (1) and (2) and 35 of the Patents Acts of 1987, Cap. 217 [R.E. 2002] of the Laws of Tanzania which is the right to be named as an inventor, the right to receive royalties/economic benefits arising from the exercise of any or all rights stipulated under section 35 of the Patent Act.
- ii) In cases where the intellectual property asset relates to copyright or neighbouring right, the rights of the author shall be as provided under

sections 9 and 11 of the Copyright and Neighbouring Rights act of 1999 subject to the exception under sections 12, 15, 16 and 23.

### **2.4.3 Obligations of the UDSM**

The UDSM shall have the following obligations:

- i) To exercise due diligence in handling all matters pertaining to the disclosure of research activities.
- ii) To raise awareness among staff on IP issues.
- iii) To provide support, where necessary, in terms of monetary consideration and infrastructural facilities in order to foster effective administration of IP.
- iv) To obtain legal protection for the IP for the interests of the institution and creator of the IP against unauthorized use by a third party or;
- v) To advertise and commercialize the IP assets as deemed appropriate for the interest of the UDSM, researcher and the general public.
- vi) To assist the inventor/author where necessary, in finding an external partner or financial support.
- vii) To endeavour to negotiate and manage IP-related agreements to the best advantage of the author/inventor and the institution.
- viii) To ensure that such agreements are consistent with IP policy and respective guidelines.

### **2.5 MANAGEMENT OF INTELLECTUAL PROPERTY**

The effectiveness of this policy largely hinges on the ability and willingness of the UDSM to set up IP structures within its current institutional framework. The UDSM shall therefore:

- i) Establish the Intellectual Property Management Office (IPMO) under the Directorate of Research and Publications.
- ii) Ensure that the IPMO is accorded sufficient resource support both financially, materially and in terms of human capacity.
- iii) Ensure all faculties, departments, institutes and colleges address and handle matters pertaining to IP within their existing Research and Publication Committees and integrate their activities and programmes with the IPMO.

## **2.6 RESEARCH COLLABORATION**

A holistic, cross-disciplinary and multidisciplinary approach to research is a trend in most of the modern research. Similarly, UDSM researchers are drawn into carrying out research with partners from different faculties, colleges or institutions. Such research collaboration arrangement may take the form of individual collaboration or institutional collaboration. Determination of IP rights becomes crucial in dealing with research collaboration. Cognizant of the above, the UDSM shall:

- i) Through the IPMO, ensure that the terms under which the contract is entered take into account the intellectual property interests of UDSM, sponsor and researcher.
- ii) Coordinate management of sponsored research activities across the various academic units involved with a view to guarding against any contravention of the provisions of this policy.
- iii) Where the UDSM/researchers decide to share part of the project cost, taking account of the relative benefits to the institution and to the sponsor, the details of such a sharing arrangement shall be explicitly stated and shall be mutually agreed to by all parties concerned.
- iv) Ensure that both parties reserve the right to delay publication of research results for a specified period not exceeding 6-12 months.
- v) Allow the sponsor, under certain exceptional circumstances, to negotiate a longer delay period with UDSM, but only on submission of compelling reason(s) and with the agreement of the research staff involved.
- vi) In no circumstance allow the sponsor the right to delay publication for an indefinite period of time.

## **2.7 COMMERCIALIZATION OF INTELLECTUAL PROPERTY**

As a public institution, UDSM is duty-bound to serve the public to the greatest extent possible through, among other things, research activities that give solutions to socio-economic development challenges confronting the Tanzanian society as a whole. Results or outcomes coming out the research done by UDSM will only make worthwhile contribution to society in Tanzania and elsewhere if concrete measures are in place to translate research results into applied knowledge. One of the widely used strategies

to translate research results into applied knowledge is through commercialization of intellectual property. Consequent from the above, the UDSM shall:

- i) Encourage transfer of intellectual property assets to the interested parties in a manner that preserves the interest of UDSM, the transferee, the researcher and the general public.
- ii) Encourage and initiate setting-up of incubators, start-up and spin-off companies with a view to making the intellectual property available to the public on fair and reasonable terms through licensing of IP.
- iii) Ensure that the technologies and other IP assets developed at the UDSM are effectively marketed/advertised to potential users in the industry and other sectors and set-up fair terms of licensing while giving special preference to local manufacturers.
- iv) Establish a system of quality control and monitoring mechanism to the licensee in order to make sure that such intellectual properties are used for the benefit of the majority Tanzanians as opposed to further private interests.
- v) Ensure that commercial interests/benefits do not outweigh the public interests/good, thereby defeat the pursuit of research for curiosity purposes by providing support to those who pursue research for curiosity.
- vi) Ensure that the capacity of IPMO is enhanced through engagement of personnel who have legal and marketing expertise in intellectual property licensing.
- vii) Ensure that all licensing or assignment agreement for transfer ownership of UDSM's intellectual property shall: (i) be subject to this Policy; (ii) include the terms necessary to fulfil the requirements and further this Policy; (iii) provide that the contracting entity bears the costs of obtaining protection for intellectual property, and (iv) money proceeds generated out of share interests be distributed according to agreed revenue distribution rules.
- viii) Under certain circumstances, consider negotiating for equity shares in lieu of or in addition to monetary consideration under an agreement between the UDSM and an external entity relating to applicable intellectual property.

## **2.8 BENEFIT SHARING MODALITY**

UDSM acknowledges the contribution of researchers and therefore accepts the need to financially reward the researchers as a means of encouraging/motivating further creativeness at UDSM. To achieve this UDSM shall therefore devise a system of benefit-sharing which shall be guided by the following principles:

- i) That UDSM and the inventor/author shall have the option for a single upfront payment or running royalties from the licensing of IP.
- ii) The net income shall be shared between UDSM and the Inventor/author in a manner which shall be devised by the IPMO, which may be determined on a case by case basis. Where the two parties do not agree, the matter shall be taken to an impartial organ for determination.
- iii) The inventor's/author's percentage share shall decrease as the total net revenue increases subject to inflation rate.
- iv) UDSM shall determine the departments, faculties, institutes, research funds e.t.c. with whom the UDSM ratio of benefit from licensing shall be shared.
- v) In cases where there are co-inventors or co-authors each shall share the net income in proportion to their contribution as mutually agreed upon them from their share from the net income. If the joint inventors and co-authors fail to reach an agreement, then the income shall be distributed among them in a proportion based on contribution as determined by the IPMO.
- vi) The proportional distribution system of income between inventors will also be employed for distribution between their academic/administrative units.

# 3

---

## OPERATIONALIZATION OF THE POLICY

Effective and proper management of intellectual property is one of the cornerstones of successful universities in many countries. For this to be achieved IP issues need to be handled within the academic and administrative framework or organs of the UDSM.

### 3.1 INTELLECTUAL PROPERTY MANAGEMENT OFFICE

In view of the above need, the UDSM shall:

- i) Establish an office called Intellectual Property Management Office (IPMO) under the Directorate of Research and Publications to coordinate, promote, advocate, audit, disseminate knowledge and protect intellectual property assets at the University.
- ii) Designate the position of the Intellectual Property Manager who shall be the head of the IPMO.
- iii) Set the terms and conditions of service and the requisite qualifications for the holder of such office in consultation with the Directorate of Research and Publications and the Directorate of Human Resources;
- iv) Set-up or institutionalise, at the college, institute and faculty levels (within the research & publications committees) the additional IP mandate which shall liaise with the IPMO in all matters pertaining to intellectual property;
- v) Ensure that deliberations and recommendations of the IPMO are tabled before the Senate for further actions.

### **3.2 ADMINISTRATIVE MODALITIES OF INTELLECTUAL PROPERTY**

#### **3.2.1 Procedure for Disclosure and Reporting of Research Activities with IP Potentials/Value**

The disclosure of research activities shall follow the following steps:

- i) The inventor/author shall have the primary duty to report and make full disclosure of any research activity which s/he is carrying out using University resources to the Dean of the faculty or head of relevant department to which he/she is responsible, using the prescribed forms designed by IPMO.
- ii) Upon receipt of the disclosure or report, the dean/head shall fill the research/invention disclosure forms and communicate the same to the Intellectual Property Manager at the IPMO to ascertain its intellectual property potential and the IP Manager shall put the communication in writing and open a file for the said researcher.
- iii) Pursuant to provision No.2 above, there shall be continuous communication between the IPMO and the researcher/faculty/department on the progress of the research and on matters relating to steps which have been taken by the IPMO to protect the research results.

#### **3.2.2 Evaluation Period by the IPMO**

- i) Unless there are justifiable circumstances to the contrary, the IP Manager shall communicate to the researcher as soon as possible but not later than 90 days of receipt of the research/invention disclosure form whether or not UDSM will pursue IP rights under the said research.
- ii) If the UDSM opts to pursue intellectual property protection, the IPMO shall take timely measures to seek protection so that the researcher could make timely publication in professional or scholarly media of the research findings associated with the research and/or the timely completion of a student's thesis or dissertation as the case may be.
- iii) The UDSM, in consultation with the inventor/author, may elect to utilize the services of patent attorneys and/or other IP experts in organizing and deciding on the most appropriate way to harnessing the IP asset under the consideration.

**3.2.3 Waiver of Rights/Assignments of Rights**

In case where the UDSM decides that it does not wish to pursue intellectual property protection with regard to a particular research, the IP Manager shall inform the inventor in writing and the provisions in section 2.3.3 of this policy shall apply.

**3.2.4 Allocation of Costs**

Unless otherwise stated, all costs associated with the application for intellectual property protection and prosecution thereof for IP assets for which the UDSM is seeking to protect and to commercialize shall be borne by the UDSM.

**3.2.5 Dispute Resolution**

- i) All disputes relating to IP shall be resolved amicably in the spirit of supporting and furthering the interest of the public.
- ii) Dispute resolution with regard to intellectual property shall be handled by the IPMO in conjunction with an ad hoc committee formed by the Deputy VC (ARC)
- iii) The Deputy VC (ARC) shall chair the committee/panel and other members shall include; the IP Manager, the dean/head of department/institute where the dispute is originating, the author/inventor, and a neutral member who is versed with IP legal issues appointed by the VC from any department at the UDSM, or outside should the circumstances so compel;
- iv) Where the dispute involves a research student, the ad hoc committee shall include a representative of the Student's Organization to be appointed by the VC;
- v. Where the dispute involves a non academic member of staff, the ad hoc committee shall include non academic staff member appointed by the VC.
- vi) Where a party is not satisfied with the decision of the Committee, s/he may appeal to the Senate of UDSM, whose decision shall be appellable to the ordinary courts of laws whose decision shall be final and binding upon all the parties.

**3.2.6 Policy Administration, Compliance and Violations**

- i) The Vice Chancellor shall be responsible for the administration of this policy;
- ii) The Vice Chancellor shall issue administrative guidelines as necessary or appropriate to assist with policy interpretation and to facilitate its administration;
- iii) The guidelines issued by the Vice Chancellor shall include procedures for the reporting and resolution of disputes and handling of policy violations;
- iv) UDSM reserves the right to initiate civil or criminal complaints for policy violations as well as to pursue any corrective or disciplinary action.

**3.3 PERIODIC EVALUATION OF THE POLICY**

- i) This policy shall be reviewed every five (5) years in the light of legal, policy and institutional developments in IP at the international, regional and municipal levels;
- ii) The evaluation team shall include members from different IP frontiers, including but not limited to, government agencies, academia, and law enforcement organs.

**BIBLIOGRAPHY**

1. "Indiana University Intellectual Property Policy". <http://www.indiana.edu>.
2. GoT, "National Science and Technology Policy for Tanzania". United Republic of Tanzania, MSTHE, April 1996.
3. GoT, "The National Higher Education Policy", United Republic of Tanzania, MoSTHE, Dar es Salaam, 1999.
4. Graeme B. Dinwoodie, William O.Hennessey, *Guideline on Developing Intellectual Property Policy*, WIPO Publication.
5. <http://www.tanzania.go.tz/policiesf.html> . October 2, 2007.
6. <http://www.wipo.int/ip-development/en/>. November 28, 2007.
7. Kabudi, P.J., "Intellectual Property Policies for Universities and Management of Intellectual Property Rights: The Need and Practical Examples of Intellectual Property Policies"; WIPO/IP/DAR/OO/6 E, June, 2000.
8. Makaramba, R.V. (1999), "Laws on Patents and Technology Transfer:" Paper Presented at the UNISPAR-UNESCO Workshop, Dar es Salaam.
9. Mtetewaunga, S.D., "Assessment, Collection and Distribution of Royalties for Copyright Works (Music) Used in Hotels, Recreation Halls, Supermarkets, etc.", Paper Presented at the 3rd IP Forum at COSTECT Hall, 11th July 2002.
10. Ogada, T.P.N., "Intellectual Property Policies for Universities and Management of Intellectual Property Rights. Practical Examples of IP Policies". Dar es Salaam, Tanzania June, 2000. Paper presented in a regional seminar on benefits of Intellectual Property systems for universities, researchers and R&D organizations - Dar es Salaam Tanzania, June 2000.
11. Dinwoodie, Hennessey, & Perlmutter, *International Intellectual Property Law and Policy*, Newark, LexisNexis, 2001.
12. UDSM, "Consultancy Policy and Operational Procedures"; University of Dar es Salaam, April, 2005.
13. UDSM, "Draft Research Policy and Operational Procedures"; University of Dar es Salaam: 2nd Edition, April 2005.
14. UDSM, "Research Policy and Operational Procedures for the University of Dar es Salaam", UDSM June 1998.
15. United Kingdom, "IPR in E-learning Programmes": Report of the Working Group; Higher Education Funding Council (HEFC) for England, 2003.