

# THE AOG - PART 15

## INTELLECTUAL PROPERTY POLICY



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## **1 Preface**

Wittenborg is committed to the development of an ‘innovation culture’ based on the generation of knowledge, which in the age of information also needs protection. We have, therefore, set out to develop and maintain a transparent process that identifies, protects and exploits our Intellectual Property (IP) within a framework which encourages and rewards all staff and students from whose work the intellectual property results. This commitment is intended to contribute to Wittenborg’s strategic aims of excellence in teaching and learning, research, scholarship and creativity, and of diversifying sources of income, support and collaboration.

Exploitation of inventive ideas and IP may well lead to the creation of enterprises. These enterprises will take a variety of different forms. Enterprises are, therefore, used as a generic term to cover all forms of legal entities that will assist Wittenborg in meeting its objectives. Social enterprises as well as traditional private companies are included in the variety of legal arrangements possible under this policy.

## 2 IP and Related Definitions

The following is a list of definitions and terms most commonly used in this document:

1. Intellectual Property (IP) means inventions, inventive ideas, designs, patents and patent applications, discoveries, improvements, methods, processes, trademarks, designs and design rights (registered and unregistered), database rights, written work (including computer software) and know-how devised, developed and/or written by members of staff in the course of their employment, or students in the course of their studies. IP can be a valuable asset, both in order to undertake teaching and research, and in enabling economic development through knowledge exchange.
2. Background Intellectual Property means IP that exists before an activity takes place, or is created outside of such activity.
3. Foreground Intellectual Property means IP that is generated during and as a consequence of the activity.
4. A spin-out company is any company formed as a consequence of academic activity or know-how at Wittenborg, regardless of whether registered IP is involved.
5. A start-up company means a company created by a third party in which Wittenborg is invited to participate (in equity terms) at the time of creation.
6. Copyright is an automatic right that can exist in many types of works, such as literary, dramatic, musical and artistic works, sound recordings, films, broadcasts and cable programmes, published editions of works.
7. Patents protect the features and processes that make things work.
8. Design is a legal right which protects the overall visual appearance of a product or part of a product.
9. A trademark is a sign which can distinguish your goods and services from those of your competitors (you may refer to your trademark as your "brand"). It can be for example words, logos or a combination of both.

### **3 Wittenborg Policy Commitment**

1. Successful exploitation of IP means that Wittenborg, its external partners, staff and students share the benefits. In order to achieve a successful outcome, all those concerned must play their part.
2. Staff must be made aware of IP issues and bring any innovative idea or technology with potential for commercial exploitation to the attention of Wittenborg at an early stage. They must maintain confidentiality, sign and execute all documents and comply with any reasonable requirements the institution has to assist in the exploitation process.
3. Wittenborg must have in place appropriate procedures and infrastructure to ensure the effective exploitation of the ideas and technologies generated by staff and students.
4. Wittenborg's subsidiary trading company(s) and third-party clients must be prepared to invest at risk against clear business objectives supported by robust decision-making processes.

## **4 Aims of the Policy**

1. This policy aims to ensure that:
  - a. The respective roles and responsibilities of Wittenborg and its staff and students are clearly defined.
  - b. The interests of Wittenborg and its staff and students are protected.
  - c. Each party making a significant contribution to an invention or creative work receives due recognition and a fair share of any financial benefits arising from it.
  - d. All research and consultancy contracts entered into by Wittenborg with external organisations (whether industrial or research) clearly describe the arrangements agreed in relation to IP.
2. In order to achieve these aims the policy identifies:
  - a. The guidelines that Wittenborg has agreed in relation to IP.
  - b. The legal framework and principles that apply to the exploitation of IP within Wittenborg.
  - c. The procedures that must be followed in relation to the identification, protection and commercial exploitation of IP.
  - d. A framework for determining the distribution of financial benefits accruing from the commercial exploitation of IP.

## **5 Wittenborg Approach to the Exploitation of Intellectual Property**

1. Wittenborg wishes to encourage the development and commercial exploitation of its intellectual property, through the most appropriate means, to the benefit of the institution and its staff and students, and as part of its contribution to economic development. However, Wittenborg's prime role is in the creation and development of ideas and IP and it is not generally best placed to exploit IP directly. It therefore enables the exploitation of IP in a variety of ways involving established and new organisations. Wittenborg is acutely aware of the need for speed to market when successfully commercialising research outputs. It also wishes to ensure that it has limited direct operational involvement in the commercialised activities.
2. Identification of potentially exploitable IP is the responsibility of staff and students. Staff are required to identify such IP by completion of an Innovation Disclosure Record; assistance with this is available from the HR department with the support of the Head of School. Students are able to receive support from the Head of School and Student Support.
3. The exploitation of the IP might take the form of licensing, assignment, or sale to existing or newly formed entities.
4. If Wittenborg is not able or willing to exploit the IP, it will normally re-assign it to the creator(s) for them to commercialise (without use of institutional facilities, time or name). Any such assignment will be subject to agreement of suitable terms and cost recovery, if the commercialisation is successful, along with consideration of any effects on the individual's ability to undertake their normal duties.
5. Exploitation and commercialisation of IP should not impinge on Wittenborg's core activities of teaching, research, and knowledge exchange.
6. Any interactions between a spin-out or start-up company must be at arm's length, to ensure charity, competition, and state aid rules are met, along with Wittenborg policy on conflict of interest. Additionally, such companies should generally not operate from Wittenborg premises, except under a specific licence to occupy.
7. Income received from the exploitation of IP will be shared with the creators.
8. Commercialisation activities as outlined in this policy may only be undertaken in the name of Wittenborg's subsidiary company.

## 6 Ownership of Intellectual Property

### Staff (including students employed by Wittenborg)

1. In accordance with the Dutch Patents Act 1995, Wittenborg claims absolute ownership of the IP created by its employees:
  - a. In the course of their employment by Wittenborg.
  - b. Who make use of Wittenborg resources and facilities in the private development of their ideas.
2. Wittenborg retains ownership of the following forms of intellectual property created by those identified in 5.1.1 above:
  - a. Patentable and non-patentable inventions.
  - b. Films, typographical arrangements, videos, tapes, records, drawings, broadcasts, multi-media productions, photographs or other works made with the aid of Wittenborg' facilities.
  - c. Wittenborg -commissioned works.
  - d. Works generated by computer hardware or software owned or operated by Wittenborg.
  - e. Computer software, firmware and related material not already covered by (a), (b), (c) or (d) above.
  - f. Registered and unregistered designs and "semi-conductor chip" topographies.
  - g. Copyright in teaching and learning materials - these materials include but are not limited to traditional paper-based material such as lecture and distance learning materials, syllabuses, teaching schemes, reports, course handbooks, course materials, validation requirements, course documents, documents developed for examination and assessment purposes, e-learning materials, web-based content, video and audio materials and software, and work commissioned by Wittenborg.
3. Unless agreed otherwise in writing, Wittenborg will not assert any possible copyright in artistic work, learning and teaching materials for personal use or reference (such as aids to teaching and learning) and scholarly work including books and articles in learned journals, unless specifically commissioned by Wittenborg.
4. Although Wittenborg supports academic dissemination of research results and encourages the publication of scholarly and scientific works, in some cases, where commercial exploitation of the results is a possibility, Wittenborg may require the author(s) to withhold publication until appropriate protection can be put in place.
5. The employee agrees to automatically grant Wittenborg with a free, unconditional, irrevocable, perpetual, non-exclusive licence to use and copy work described in 6.3 above for academic and administrative purposes. Wittenborg does not assert its ownership in any other IP described in the scholarly work.
6. It is the employee's responsibility to ensure that if such material has been submitted to or published by a journal or a publisher, that such journal and publisher will provide a similar licence to Wittenborg.
7. Wittenborg makes no claim on IP arising from wholly private research activity or consultancy work undertaken by its employees and involving no use of resources or facilities of Wittenborg. In applying for the Head of School's approval to undertake private consultancy work in accordance with the

institution's Financial Regulations, employees should indicate whether an innovation is likely to result. Should an employee decide to take advantage of Wittenborg advice and support in the protection and exploitation of a wholly private innovation then this policy will apply, subject to Wittenborg's consent to become involved.

8. In the event that an employee making a significant contribution to the creation of IP leaves Wittenborg, ownership of the IP will remain with Wittenborg. However, it is recognised that the creator may wish to continue to exploit his/her IP. In this instance Wittenborg may re-negotiate the terms under which this may be acceptable.

#### **Honorary staff and individual engaged with Wittenborg or its programmes (who are not employed by Wittenborg)**

1. Individuals who have an (honorary) association with Wittenborg but who are neither employees or students are required to assign their rights to any IP created by them during the course of their (honorary) activities within or for Wittenborg. These individuals will be treated as if they were employees of Wittenborg for the purposes of financial reward from commercial exploitation. In certain cases, when (honorary) staff remain employees of an industrial or other type of organisation, arrangements may need to be negotiated regarding ownership, use and exploitation of IP. An agreement should be put in place regarding ownership of IP before the commencement of the honorary position. To put such an agreement in place, please contact the Head of School.

#### **Students registered on undergraduate and postgraduate taught courses (who are not employed by Wittenborg)**

1. In general, students own the IP they create during their course of studies. There are some circumstances where this does not apply, namely when:
  - a. They participate in a project sponsored by a third party - in this case the terms of the contract/grant between Wittenborg and the third party will determine ownership of IP.
  - b. They are working in collaboration with Wittenborg staff on a project where the IP they create builds on existing IP created by a member of staff.
  - c. They wish to work with Wittenborg to exploit their own IP and Wittenborg agrees to support them.
2. When assigning their ownership rights to Wittenborg, a student is accorded the same rights as a member of staff, with respect to revenue sharing.

#### **Postgraduate research students**

1. Postgraduate students on research courses will be asked to assign their IP to Wittenborg unless agreed otherwise in writing. Students will be asked to sign a Confidentiality and IP undertaking at the time of induction.
2. Where a student is offered a studentship sponsored by a third party, under which the third party has a claim on IP arising from its research, the student must agree that the IP will be initially owned by Wittenborg and ownership will be then determined in accordance with the terms of the agreement with the third party.

3. The copyright in the thesis written by a student will belong to the student. The student grants Wittenborg a free, unconditional, perpetual, non-exclusive licence to use their thesis or a copy of their thesis (digital or otherwise) for academic and administrative purposes. Wittenborg requires copies of the thesis to be deposited in Wittenborg.

## **7 Ownership of Background Intellectual Property**

1. A project may make use of Background IP owned by someone other than Wittenborg. In this case (and where commercial use is intended), relevant contractual arrangements should be put in place with the owner. Where a member of staff or a student was involved in the creation of the IP whilst with a previous employer, that employer should be contacted to make these arrangements.

## **8 Identification, Protection and Exploitation of Intellectual Property**

- Wittenborg has adopted a three-stage process for developing ideas into commercial propositions. The stages are:

- a. Identification and protection
- b. Development
- c. Exploitation

The stages are largely sequential as the idea develops beyond the creator(s) and their immediate research group or school into one that is of significance to Wittenborg. At each stage the creator(s) is supported by staff from the relevant department.

- Identification and Protection: Once an idea which is thought to have commercial potential is reported, an initial assessment will be made by the Executive Board whose primary task is to consider whether there is a need to protect the idea.
- Development.
- Exploitation: If the above-mentioned assessor decides that the idea has commercial potential, then the decision on how to proceed and support the development beyond Wittenborg rests with the Executive Board. This is the key decision-making body which determines how exploitation will be managed and the form which it will take. Its decisions are final.
- Wittenborg will re-examine its involvement in any of its projects on a periodic basis and reserves the right to cease its involvement at any point, in which case ownership of IP may be ceded to the creator(s) subject to certain conditions on the understanding that Wittenborg ceases to have any obligation to meet further costs associated with IP protection or exploitation.

## 9 The Principles of Company Formation

1. If the Executive Board agrees to the setting up of a legal entity in line with a submitted business plan, it will be formally approved.
2. Shares in a spin-out company will be held by Wittenborg's subsidiary company.
3. Although the relative equity holdings of Wittenborg and creator(s) are broadly expected to be equal prior to any financial investment, this will be decided by the Executive Board on a case-by-case basis, taking into account recommendations from involved parties.
4. Wittenborg would not, as a matter of course, invest funds in such ventures, though it reserves the right to do so.
  - a. Where a member of staff becomes a shareholder in a spin-out company, they will automatically forfeit any right to a share in any income received by Wittenborg, such as, but not limited to, royalties.
  - b. In the event that school-owned IP is required to be assigned to the new company, Wittenborg will seek to ensure that this cost is borne by the new company.
  - c. Any interactions between the new company and Wittenborg, such as the use of staff or services, must be negotiated on an arm's length basis, and based on, at the minimum, the full recovery of costs.
  - d. Wittenborg reserves its right to recover all legal costs associated with due diligence and the establishment of an entity from the new company.
  - e. In cases where the intention is for the creator(s) to retain an equity share in a spin-out company, it is recommended that they seek their own legal and financial advice. Wittenborg will not be liable for any personal tax liabilities that an individual may incur.
  - f. If Wittenborg considers an exit strategy from any company formed under this policy it will always be in the form of cash, shares for which there is a liquid market, or a combination of the two.
5. When a spin-out company is formed, Wittenborg will normally obtain an appropriate portion of the equity which reflects the costs incurred by Wittenborg in protecting, developing and supporting the research activity. The level of this will vary on a case-by-case basis. In addition to any equity share, Wittenborg will also seek to recover any legal or set up costs relating to the establishment of a new company.

## 10 Staff Involvement in Commercialisation

1. Where a member of staff is to undertake any task (e.g. consultancy, services, or secondment) with a licensee or spin-out company, it must be governed by a suitable agreement between the company and Wittenborg. The head of school or department will have to consider how much of an individual's time can be allocated to an enterprise where they also hold equity in the enterprise. The company would normally see such an individual as the Chief Technical/Scientific/Information Officer and would expect a regular commitment of time. This continued support is normally discussed and negotiated in the shareholders' agreement. Depending on demands, this time may therefore need to be bought out by the spin-out company.

Creators are, therefore, permitted to provide services (either as a non-executive director of the company or simply as an advisor), subject to agreement by their head of department. Creators may be seconded to the spin-out company, subject to the normal contracting and approval processes, and in all cases the secondment is subject to full recovery of costs (including the use of the school's facilities and services).

2. Wittenborg staff are permitted to accept appointments to non-executive directorships in spin-out companies, subject to the agreement of their Head of School or the Executive Board. Individuals undertaking such roles should note that they are personally liable as a director, and should ensure that they fully understand the legal and ethical responsibilities involved.
3. Staff in senior positions and staff in business development roles undertaking third party directorships in companies where Wittenborg has a direct shareholding are likely to have actual or potential conflicts with their position at Wittenborg. Such situations must, therefore, be carefully managed and monitored. In accordance with the Register of Business Interests, a member of staff who is a director should not be directly involved in Wittenborg decision-making processes relating to that organisation regarding procurement, contracting, investment, or disposal.
4. Where Wittenborg or its subsidiary company has the right to appoint a non-executive director, the appointment will be made following advice from the Executive Board. Wittenborg may draw on relevant alumni for these purposes.

## **11 Advice on the Policy**

Staff wishing to get advice on any aspect of this policy should contact the HR Department or the Head of School.

Students should first contact their Process Tutor.