

Policy on Intellectual Property Rights (IP) at the IHE Delft Foundation

The Rectorate of the IHE Delft Foundation (IHE Delft) shall be responsible for interpreting this policy and resolving questions and disputes concerning it. From time to time, the Rectorate may suggest amendments to this policy on its own initiative or at the request of the Academic Board or other relevant advisory bodies. Amendments to this policy shall be communicated timely and shall not affect IP which was established prior to the changes being made.

Definitions

1. In this IP Policy, the following terms shall have the defined meaning provided:

"**IP**" shall mean anything that is or can be protected by IP Rights, such as but not limited to materials, formats, creations, designs, inventions, prototypes, et cetera.

"**IP Rights**" shall mean any right that protects IP, such as but not limited to copyrights, moral rights, trademarks, trade names, knowhow/trade secrets, patents, registered and unregistered designs and design rights, utility models, database rights and plant breeder rights as well as any application thereto.

"**Create/Creation**" as a verb and its conjugations shall mean any act of creating, making, developing, inventing, conceiving or involvement or contribution to such acts; as a noun shall mean the product of any act of Creating.

Preamble

2. IHE Delft is a signatory of the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities and an advocate of the Creative Commons (CC) copyright licensing scheme, which seek to expand the range of research and creative work freely available for others to build upon and share. Owing to this, the IHE Delft Institutional Repository makes PhD theses and working papers created by IHE Delft staff and participants freely available to the Internet community in order to raise awareness, promote academic debate and enable education (<http://repository.tudelft.nl/IHE Delft/>).

3. IHE Delft needs to protect its investments, freedom to operate and rights in teaching and support materials, so that these can be enhanced, developed and improved over time as teaching participants is a core activity. Similarly, IHE Delft needs to protect its rights to exploit Intellectual Property (IP) when IHE Delft's facilities or resources have been used to create the IP. However IHE Delft recognises that members of its staff need to pursue and develop their academic careers and that their use of the materials they have created is important to them. This policy aims to satisfy these requirements where reasonably practical and not in conflict with the stated goals of IHE Delft's core activities.

4. This policy describes the IHE Delft policy on IP and IP Rights.

This policy applies to all IP created by, for or with the IHE Delft and to all staff with a contract of employment with IHE Delft (whether permanent or temporary, including guest lecturers), PhD fellows and other third parties who contribute to the creation of IP jointly with or on behalf of IHE Delft. The policy does not cover the use by IHE Delft, its staff or participants of IP that is owned by third parties for the purposes of teaching, personal study or research purposes. Advice about the use of third party copyright materials for research or teaching purposes should be sought from the Library.

5. Since IHE Delft is located in the Netherlands, Dutch law, shall apply to this IP policy. The Dutch statutory rules on the ownership of IP created by staff (whether permanent or temporary, including guest lecturers), PhD fellows and other third parties who contribute to the creation of IP jointly with or on behalf of IHE Delft, and/or participants, unless such rules are deviated from in the following.

6. Under Dutch law the originator of IP owns the IP Rights, except where the originator is an employee, in which case the IP belongs to the employer. IHE Delft therefore owns the IP Rights in IP created by its staff under their contracts of employment where such IP is created by employees whose job description envisages such an output, but makes exceptions to this rule for its staff in certain specific cases, as described below.

7. All parties formally registered within the IHE Delft Student Information System (e.g. students and/or participants)¹, are not employees and thus own the IP Rights in IP that they create, unless there is a written agreement to the contrary. As such, all individuals officially registered in the Student Information System of IHE Delft will be required to sign this IP Policy and the attached annex 1 under which they assign and transfer their IP Rights to IHE Delft before they become involved in any activity in which IHE Delft may require use or control of the IP for teaching, research or commercialisation. Should any further formalities, deeds or agreements be required later on to complete such assignment or transfer, then participants will assist IHE Delft with such required actions immediately and upon first request.

8. Unless there is a reason and contract to the contrary, IHE Delft also assumes ownership of IP and IP Rights in its contracting with third parties, such as contractors, who are not staff or employees in the legal sense of the word and consequently might otherwise own IP Rights in work that they carry out under contract. IHE Delft's policy is that all contracts with contractors should explicitly state that the IP Rights in IP that contractors create under contract belongs to IHE Delft (or, as a minimum, that the contractor gives IHE Delft an irrevocable, royalty-free, non-exclusive licence to use and sublicense the IP Rights and IP created by the contractor).

9. Where any such IP Rights or IP created is subject to an agreement with a third party which is approved by IHE Delft, the agreement with the third party will take precedence over this policy.

IHE Delft staff

10. The terms 'IHE Delft Staff' and 'Staff' shall include all academic and non-academic staff which is employed by IHE Delft under formal contracts of employment, including part-time staff and guest lecturers.

¹ The term 'IHE Delft Participant' and 'Student' shall include all participants, PhD fellows, Top Talent programme participants, on and off campus, officially registered as such in the Student Information System at IHE Delft.

11. In exceptional circumstances, and where it is in the interest of IHE Delft, the provisions of this policy may be varied by written agreement between a member of Staff and IHE Delft.

IHE Delft ownership of intellectual property

12. Except as otherwise specified below, IP created by Staff in the course of their employment with IHE Delft, commissioned by IHE Delft or created under the terms of a research grant or contract between IHE Delft and an external third party shall belong to IHE Delft.

Exceptions

13. In accordance with common academic practice, IHE Delft waives its rights to ownership of the following IP Rights:

13.1 The copyright in any publication, work or design created by a member of Staff as a scholarly work where its intent is the furtherance of his/her academic or professional standing. Scholarly works include books, contributions to books, articles, conference papers and other works whose principal intent is to add to the body of knowledge.

14. IHE Delft shall retain a free, non-exclusive, perpetual, irrevocable licence to use, copy, and modify such IP for teaching and research purposes and will respect the moral rights of staff in such IP, unless requested in writing by relevant staff not to do so. Any such materials shall bear copyright notifications of the form "(CC BY NC This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. <name author>, <year>, [for] IHE Delft)". IHE Delft shall, where practicable and appropriate, consult with individual members of Staff prior to making any modifications to such IP.

15. IHE Delft shall only waive its rights in the manner described under section 13.1 if such materials are sent to the Library to be registered within one month after creation. Failure to do so shall result in IHE Delft retaining full ownership of the relevant IP Rights and IP.

16. IP created within the context of an agreement with a third party which will take precedence over this policy.

Publication

17. IHE Delft strongly encourages academic publication and dissemination of IP as being fundamental to the open exchange of research and educational materials. IHE Delft recognises the potential conflict between securing protection of intellectual property and academic publication. The risks of any such conflict can be minimised by early consultation. Particular care should be taken in the following circumstances and advice should be sought with the Library.

18. Publication by any method (verbal, including internal seminars, written and electronic) of information on research outputs may invalidate IP Rights and result in the loss of the opportunity to protect IP, for example by the filing of a patent application or registered design. If the work to be published describes IP of potential commercial value and in which IHE Delft has an interest, members of Staff must first consult with the Head of Department. The Head of Department shall advise the Rectorate on any potential IP in the work. Publication must be delayed until the IP has been protected or a decision has been made by the Rectorate not to protect it. If no decision is taken by the Rectorate within 21 calendar days after the advice from the Head of Department has been received, then permission to publish shall be deemed to have been given.

19. Publication of IP generated in the course of externally-sponsored research projects may be subject to the terms of agreements between IHE Delft and funding bodies or collaborators. Members of Staff wishing to publish such IP should first establish whether any restrictions apply, for example on the publication of specific data or know-how.

20. Where IHE Delft has waived its right to the ownership of the IP Rights and IP in section 13 above, Staff may enter into agreements with third parties for the scholarly dissemination of those materials or works, in, for instance, academic journals,

textbooks etc, subject to IHE Delft's right under section 14 to retain a non-exclusive licence for research and teaching purposes.

Arrangements for the protection of IP

21. Where Staff creates IP that is of a novel and potentially exploitable nature, it must be reported to the Rectorate as soon as possible in order that the interests of the Staff member and of IHE Delft can be established and safeguarded. Staff should maintain a laboratory note book in accordance with the internal information management guidelines, while performing research that has the potential to be made commercially available, and should ensure that it is regularly signed and dated by a senior colleague such as their Deputy Head of Department, supervisor or similar. The information relating to the IP must be kept confidential until such time as the IP has been evaluated and, where a decision is made to apply for legal protection (e.g. a patent application), such application for protection has been secured.

22. Where it is decided that IHE Delft will apply for legal protection for IP, it is expected that Staff involved in creating the IP will provide all reasonable assistance in the process, for example, by providing information promptly upon request, attending meetings, advising on further developments and maintaining confidentiality as required. This obligation will survive termination of the employment agreement or of any other agreement governing the work relationship of relevant Staff with IHE Delft.

Commercialisation

23. IHE Delft is committed to exploiting the IP Rights and IP which it owns or controls in a way that optimises the benefits for society in general, itself and its Staff. Where IP Rights are secured in order to secure freedom to operate, to enable commercial exploitation for valorising IP and to produce and/or provide this IP at a low cost for the developing countries and countries in transition. Where IP is successfully commercialised, IHE Delft will share the financial benefits with the Staff concerned – see sections 29 to 33 below.

The Rectorate in close consultation with the Head(s) of Department, will evaluate the commercialisation potential of IP Rights and IP and determine whether it wishes to

exploit it. IP Rights and IP may be exploited in a number of ways, for example through selling, licensing, joint ventures or the formation of spin-off companies.

24. IHE Delft shall be free - at its sole discretion – to at any time assign the rights in its IP Rights and IP to third parties, for example, research sponsors, research partners, subsidiary companies or spin-off companies. Any income derived from such an assignment shall be distributed according to sections 31 and 32 below.

25. If IHE Delft does not wish to take an active part in exploitation it may - subject to any obligations to third parties - assign its rights to the member(s) of Staff (and any others directly involved in creating the innovation) to secure exploitation by whatever means IHE Delft considers appropriate subject to the revenue sharing formula in section 31 and 32 below.

26. If a member of Staff wishes to commercially exploit (i.e. use for financial gain or for trading purposes) the IP Rights or IP in his/her personal lecture materials or in scholarly works created in the course of his/her employment, then s/he should consult with the Rectorate; agreement by IHE Delft shall not be unreasonably withheld subject to the revenue sharing formula in section 31 below.

27. Where members of Staff engage in private consultancy with third parties, use of IHE Delft IP Rights and IP, such as the logo and letterhead, is not permitted. Additionally IHE Delft 's policy on Sideline Activities must be observed. Further, any use of IHE Delft 's name in writing in connection with the private consultancy activities of a member of Staff is subject to approval by IHE Delft, as specified by the Side Line Activities policy.

28. Staff is not permitted to assign or licence to third parties rights in IHE Delft IP. Staff is obliged to maintain strict confidentiality with respect to IHE Delft's IP Rights and IP and are required to ensure that non-disclosure agreements are in place before discussing matters relating to IHE Delft IP Rights and IP with third parties.

Sharing of financial benefits

29. Staff shall be entitled to retain in full financial benefit generated from the academic publication of scholarly works.

30. Any member of Staff who is responsible for generating IP that subsequently delivers any kind of financial benefit to IHE Delft as a result of commercialisation of those IP Rights and IP by whatever means, be it for example, via license fees, royalty income or the sale of shares owned by IHE Delft in joint ventures or spinoff companies, shall be entitled to a share of that benefit under section 31. In case of a patent, the Rectorate shall be solely responsible for determining whether a patent application shall be filed on a supported invention. Filing determinations may be made on the basis of commercial potential, obligations to and rights of third parties, or for other reasons which the Rectorate, in its discretion, deems appropriate. IHE Delft Staff who is seeking patent application, shall cooperate in the patenting process in all ways required by the Rectorate. IHE Delft shall bear the expense of the patenting fees, which fees shall be subtracted from any financial benefit before sharing the net benefits under section 31.

31. Where Financial benefits accruing to IHE Delft and Staff members are to be shared, such benefits will be shared according in principle to the following formula:

Cumulative Net Financial result per patent	Staff member(s) %	IHE DELFT Foundation%
First 25.000,- €	30 %	70 %
Over 25.000,- €	15 %	85 %

In the event that a member of Staff forms a company to exploit IP Rights or IP assigned to him/her by IHE Delft, the IHE Delft Foundation will receive at least 30% of the equity allocated to him/her for the IP. Adequate protective measures (such as a gradual transfer, purchase option or registered licenses and/or security rights to the IP Rights or IP) shall be put in place to protect IHE Delft against the risk of losing the IP in case the company goes bankrupt or would otherwise be deprived of the IP Rights or IP.

32. For the above purpose, cumulative net financial result per patent is defined as all financial results in connection with a single patent or venture in excess of the direct commercialisation costs incurred, including but not limited to costs of securing legal protection and third party intellectual property rights, the enforcement and commercial exploitation of the IP and financial commitments to investors. Such costs will be reclaimed prior to any distribution taking place. In the event that two or more pieces of IP Rights or IP are combined in a single project or venture, then an agreement defining the distribution of cumulative net financial result per patent to the contributing parties must be concluded before the start of the commercialisation process.

a) Where more than one member of Staff contributes to the creation of IP, the cumulative net financial result per patent will be equally divided between these Staff unless there is a signed written agreement between all relevant Staff contributors and IHE Delft to the contrary.

b) Where IP is made jointly by a member of Staff and a Participant or third party who may have rights of ownership in the IP, a written agreement between all parties is required before the start of the commercialisation process to address the ownership and revenue-sharing from any commercial exploitation of the IP. If no agreement approved by IHE Delft is in place at the date of commercialisation, then ownership and revenue-sharing between the interested parties shall be determined unilaterally by IHE Delft.

33. Shareholdings by members of Staff in IHE Delft spinoff companies and joint ventures will be agreed on the basis of the business and/or technical requirements of the respective spinout company or joint venture.

Third parties

34. Third parties (i.e. individuals who are not employees of IHE Delft) may be involved in the creation of IP in conjunction with or on behalf of IHE Delft. They may include visiting academics, associate academics, Emeritus Professors, consultants and contractors.

Visiting/associate academics, guest lecturers and Emeritus Professors

35. Where visiting/associate academics, guest lecturers and Emeritus Professors are appointed by IHE Delft and may create potentially exploitable IP, an agreement should be entered into transferring the ownership of IP arising in the course of their appointment to IHE Delft. IHE Delft will undertake to treat the appointees as if they are Staff for the purposes of the IP exploitation and revenue sharing arrangements.

Contractors and consultants

36. All contracts with outside contractors and consultants should explicitly state that the IP Rights in any IP they create will belong to IHE Delft. Where this is demonstrably impossible and cannot be agreed with the contractor, contracts should say, as a minimum, that the contractor gives IHE Delft a non-exclusive, world-wide, royalty-free, irrevocable and sub-licensable licence to use such IP Rights in the IP.

IHE Delft Participants/Students/ PhD fellow

37. The term ‘IHE Delft Participant’ and/or ‘Student’ shall include all participants, PhD fellows, Top Talent programme participants, on and off campus, officially registered as such in the Student Information System at IHE Delft.

38. Where an officially registered individual in the Student Information System of IHE Delft, is also an employee of IHE Delft, it will be necessary to determine whether an IP Right or a piece of IP has been created in this capacity or as an employee, as this will determine whether regulations pertaining to Staff or Participants apply.

Participant Ownership of IP

39. IHE Delft acknowledges that Participants, as non-employees, own the IP they create independently in the course of their degree studies, subject to a number of exceptions as detailed in sections 40 through 42 below.

Exceptions

40. Research projects form a part of many degree programmes. Such projects are usually proposed by members of academic Staff and will often be connected in some way to that academic’s on-going research interests. In such cases, Participants may join a team to

investigate one particular aspect of a much larger research programme, thereby drawing on the considerable expertise, reputation and infrastructure of the group.

41. In these circumstances, as more fully set out in section 42 below, IHE Delft requires Participants to assign their IP to IHE Delft and to complete and sign formal documentation to give effect to such an assignment.

42. In exchange, IHE Delft undertakes to treat Participants in the same way as members of staff. This is done by applying IHE Delft's revenue sharing arrangements as described in sections 31 through 32, whereby Participants are equally treated as an employee in sharing the revenues.

Circumstances where IHE Delft will require ownership of IP created by Participants

43. IHE Delft shall have ownership of IP created by Participants in any the following circumstances:

43.1 The IP Rights or IP developed by the Participant may be needed to enable use to be made of IP Rights or IP created by the research team. IHE Delft seeks to avoid a position where a small gap in its IP portfolio precludes successful commercialisation;

43.2 The IP Rights or IP are based on advice and ideas contributed by members of academic Staff or be based on confidential, proprietary or otherwise valuable information that already belongs to IHE Delft or a sponsor;

43.3 The research programme is conducted under the terms of agreements with, or research grants from, outside parties, including both commercial and non-commercial funding bodies. These terms may require that IP Rights in IP generated in the research programme be owned by the outside body or IHE Delft, or be licensed to the outside body; and/or

43.4 In creating the IP Rights or IP, the Participant is funded by IHE Delft or makes substantial use of IHE Delft resources.

Procedure for assignment of IP Rights or IP

44. Where any of the above circumstances arise, IHE Delft will require that Participants complete and sign a confidentiality and intellectual property agreement before commencing work on the project. In signing that document, Participants will:

44.1 agree to maintain strict confidentiality with respect to IHE Delft IP Rights and IP and to ensure that non-disclosure agreements are in place before discussing matters relating to IHE Delft IP Rights and IP with third parties;

44.2 agree to assign ownership of the IP Rights and IP to IHE Delft if and when requested and not to assign or licence any rights in IHE Delft IP Rights and IP to third parties; and

44.3 benefit under IHE Delft's revenue-sharing arrangements detailed in sections 31 as if they are a member of Staff.

Commercialisation

45. In addition, Participants may at any time approach IHE Delft with a view to seeking support for the commercialisation of IP Rights and IP belonging to them. This will generally involve the Participant assigning ownership and exploitation rights in the IP to IHE Delft. In consideration for this assignment, the Participant will benefit under IHE Delft's revenue sharing arrangements as if s/he is a member of Staff.

46. Participants should consult with their supervisor in the first instance on any matter relating to this policy.


Dispute resolution

47. In the event that a dispute arises in connection with the provisions of this Policy, this should be raised initially with the IHE Delft Rectorate and the parties concerned shall themselves seek to resolve the issues in the first instance. All internal procedures should be exhausted before resorting to external resolution processes. Should no acceptable outcome be reached, the dispute can be referred to a single arbiter who be appointed by the Rector in agreement with the Staff or Participants in dispute. The arbiter shall make a determination that shall be final and binding on IHE DELFT and

the creators/ inventors in dispute and which shall include the apportionment of the cost and the expenses payable by each of them.

This Intellectual Property policy will be monitored by the Rectorate of IHE Delft. The policy will be evaluated on an annual basis and may be amended. All amendments to this IP Policy shall be posted on the Intranet (the Source) and communicated by email or other means to Staff and Participants.

The Rectorate of the IHE Delft Foundation,
Johan Aad van Dijk, Business Director a.i.



15 September 2016

ANNEX I**Confidentiality and Intellectual Property Assignment Agreement for Participants
at IHE Delft**

Research Project Name: _____ (the "Project")

I understand that, consistent with applicable Dutch laws and regulations, IHE Delft is governed in the handling of intellectual property by its official IP Policy entitled **POLICY on INTELLECTUAL PROPERTY RIGHTS**, (a copy of which I have received and signed) which policy forms a whole with this annex, and I agree to abide by the terms and conditions of this IP Policy in the course of my activities at IHE Delft and in the work that I carry out on the Project.

As a general rule (and subject to the exceptions set out in this IP Policy) any intellectual property rights in any IP Rights or other property rights to IP, whether vested, contingent or future anywhere in the world), created by me in the course of my work with IHE Delft (and in particular in the course of my work on the Project) is the property of and vests solely and absolutely in IHE Delft.

Pursuant to this IP Policy, and in consideration of my participation in projects (and the Project) administered by IHE Delft, access to or use of facilities provided by IHE Delft and/or other consideration, I hereby agree as follows:

1. I will immediately and fully disclose to IHE Delft all IP, which I understand to include all potentially patentable inventions and other IHE Delft IP conceived or first reduced to practice in whole or in part in the course of my IHE Delft responsibilities, my participation in the Projects at IHE Delft or with more than incidental use of IHE Delft resources. I further assign and transfer to IHE Delft all my rights, title and interest in such IP Rights and IP created in connection with IHE Delft and/or the Project and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment and transfer and to further detail such IP as may

reasonably be required. Such assignment is not inconsistent with the terms of my continuing employment outside of IHE Delft (if any) or with any other agreement I have entered into. This document shall serve as the deed of transfer required by law.

2. I will not use any information defined as confidential or proprietary by any non-IHE Delft employer (if any) in the course of my IHE Delft responsibilities and I will not do consulting or research work for any non- IHE Delft employer (unless such work is approved of in writing by IHE Delft). I shall maintain as confidential any and all material available to me in the course of my IHE Delft responsibilities which is either marked as confidential or which I should reasonably understand to be confidential in nature.

3. I will not enter into any agreement creating IP Right or IP obligations in conflict with this agreement.

4. This agreement is effective on date of my IHE Delft hire, enrolment or participation in projects administered by IHE Delft, and is binding on me, my estate, heirs and assigns.

Signed this ----- day of -----,

Signature

Name

Signed by IHE Delft Foundation for acceptance of the assignment and transfer:

Signature

Name

