

Who owns the IP created by students during university?

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If you are currently studying or planning your studies at a university in South Africa, it is important that you understand your rights as an intellectual property creator during your time at university. You might argue, as a student and especially during your undergraduate studies, that you will not be participating in research and development in any manner and therefore "intellectual property" is merely a module for law students, and you're not even studying law.



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During your time at university, you may be an intellectual property creator without knowing it. Intellectual property in this instance would be *any creation of the mind that is capable of being protected by law*; which by definition includes literary works, musical works, artistic works, computer programs, trade secrets, trademarks, designs and even patentable inventions. The chances of you creating some form of intellectual property during your time at university are considerable and therefore it is important that you know where you stand.

It might then come as a shock to some of you that there is legislation governing this IP: the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (the "IPR Act" for short).

The IPR Act is aimed at ensuring that where intellectual property is generated using tax payer money, your university being funded by tax payer money to a large extent, this IP is used to the benefit of South Africa. So, what does this mean for you as a student?

Most importantly, the IPR Act requires all universities to establish and maintain an office of technology transfer (“OTT”). It is important that you identify where on campus your OTT is located, as they are tasked with ensuring that the IPR Act is followed by the university, and furthermore, they develop the university’s policies regarding intellectual property created by its students. Therefore, they may be your first port of call when you have any questions about IP that you have created.

This leads to the next aspect, the rights in the IP that you create during your time at university are largely governed by two texts; the first is the IPR Act, and the second is your university’s intellectual property policy as developed by your OTT and agreed to by yourself upon registration for your course.

As an example of the interplay between these two, the IPR Act sets the default position that any intellectual property created by you using university resources will be owned by the university. In terms of the IPR Act, excluded from this definition of intellectual property is academic works such as lecture notes or e-learning materials. Further excluded from this would be IP created by yourself not using the university’s resources. It is important to note that these exclusions might not be mirrored in your university’s IP policy, and that in such instances your university could indeed still own the intellectual property you created when you drafted your e-learning materials or lecture notes.

Further to the above example, the IPR Act states that you, as an intellectual property creator, are entitled to a certain minimum benefit-sharing in the revenue that accrues to the university as a result of the IP that you created. In contrast to these minimum requirements, your university’s benefit-sharing policy might be more liberal to those prescribed by the IPR Act.

The above merely presents two examples in a complex environment, and there are a host of other aspects which you must be mindful of.

However, and in conclusion, when considering the IPR Act, your university’s policies and your effort as a student, remember that the university is an institution of research and education, and your OTT is mindful of this. Therefore, most OTTs have an open-door policy to allow students to find out more about their rights, and to assist you in ensuring that any Intellectual Property created at university is correctly protected.

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