

Summary of the IPR Act

*SUMMARY OF THE INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED
RESEARCH AND DEVELOPMENT ACT, 2008 (ACT No. 51 OF 2008)*



**TECHNOLOGY
TRANSFER
OFFICE**

1. Definitions

2. Objects of the Act

The object of the Act is to make provision that intellectual property emanating from publicly financed research and development is identified, protected, utilised, and commercialised.

3. Application of the Act

The Act applies to intellectual property emanating from publicly financed research and development.

4. Choice in Respect of Intellectual Property

Intellectual property emanating from publicly financed research and development is owned by the recipient of public funds.

Such a recipient may choose whether or not to retain ownership. If the recipient chooses not to retain ownership, then the state may take ownership. If the state chooses not to take ownership, then the intellectual property must be offered to the inventor.

5. Management Obligations and Disclosure Duties

It is the duty of the recipient organization to ensure that there are effective mechanisms for disclosing IP, and that personnel must do so within 90 days of identification of the IP.

The recipient must assess the IP to determine whether it merits statutory protection, and where appropriate use its best efforts to obtain protection in its name.

The recipient may negotiate and enter into IP transaction with third parties, and manage the revenues due to it from these transactions.

The recipient must also report twice yearly to the NIPMO.

6. Establishment of Office of Technology Transfer at Institutions

Any institution must within 12 months of the Act coming into effect, establish an intellectual property office, and designate persons and infrastructure to undertake the responsibilities of the office.

An office of Technology Transfer is responsible for undertaking the obligations of the institution in terms of the Act.

NIPMO may assist this office financially, or with staff development support.

7. Functions of the Office of Technology Transfer

The functions of the office must be performed by appropriately qualified personnel who collectively have interdisciplinary expertise in the identification, protection, and management and commercialization of intellectual property and IP transactions.

The office must implement on behalf of the institution, policies for disclosure, identification, protection, development, and commercialisation, and benefit sharing.

Attend all aspects of identification, and statutory protection. The office must also attend to all aspects of intellectual property transactions and commercialization.



8. Establishment of National Intellectual Property Management Office

9. Functions of NIPMO

10. Rights of Intellectual Property Creators in Institutions to Benefit Sharing

IP creators are granted a specific right to a portion of the revenues that accrue to the institution from their IP, and have a first call on such a distribution ahead of institutional distribution. The institution must apportion a share of its revenue to more R&D, or TTO operations, or statutory protection.

11. Conditions for Intellectual Property Transactions

The recipient determines the nature and conditions of IP property transactions but MUST give preference to non-exclusive licences.

The recipient must also ensure that the State has an irrevocable and royalty-free licence to use the IP for emergency needs.

IP must revert to the Institution on liquidation if shareholding is given as consideration for the IP.

12. Restrictions on Offshore Intellectual Property Transactions

A recipient must advise NIPMO is contemplating an offshore IP transaction.

13. Intellectual Property Fund

NIPMO must establish a fund to provide financial support for statutory protection of IP and maintenance of IP rights. Institutions may recover costs from this fund.

14. Acquisition of Intellectual Property Rights by State

NIPMO may demand the assignment of right to any IP if the IP in question is not being commercialized. NIPMO may also do so if a recipient fails to make a disclosure of any IP to the NIPMO.

15. Co-operation between Private Entities or Organizations and Institutions

Any R&D undertaken at an institution and funded at full cost by a private entity shall not be deemed to be publicly financed. Full cost must be determined in accordance with international financial reporting standards, and includes all applicable direct and indirect costs.

Any private institution may become an exclusive licensee of intellectual property if the organization has the capacity to manage and commercialise the IP in a manner that benefits the republic.

Any entity may become a co-owner if there has been a contribution of resources such as relevant background IP, joint IP creatorship, arrangements for benefit-sharing, and conclude a commercialisation agreement.

16. Confidentiality

Employees at TTO may not disclose any information in regard to matters which come to their knowledge in terms of this Act.

17. Regulations

18. Short Title and Commencement

