

**[DOTC Administrative Order No. 004, s. 2015,
April 13, 2015]**

**THE DEPARTMENT OF SCIENCE AND TECHNOLOGY
INTELLECTUAL PROPERTY POLICY**

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**CHAPTER 1
INTRODUCTION**

Section 1. Rationale. The Philippine Technology Transfer Act of 2009 (Republic Act No. 10055) took effect on May 8, 2010. Chapter IX of the Act's Implementing Rules and Regulations (IRR) requires that the DOST define its policy on intellectual property and lay down the institutional mechanisms for technology transfer activities. The DOST IP Policy shall guide its attached agencies in the performance of their roles as government funding agencies (GFAs) and research and development institutions (RDIs). Likewise, it shall define the engagements of DOST and its attached agencies with stakeholders including, but not limited to, other public RDIs, private RDIs, public and private higher education institutions (HEIs), and technology adopters from the private sector.

This is in accordance with the DOST's twin mandate of providing central direction, leadership and coordination of scientific and technological efforts and ensuring that the results therefrom are geared and utilized in areas of maximum economic and social benefits for the people.

Section 2. Declaration of Policies and Principles. The State fully recognizes that science, technology, and innovation are essential for national development and progress. It shall therefore give priority to research and development (R&D), invention, innovation, and their utilization. It shall also encourage the widest and most systematic participation of all stakeholders including marginalized groups like elderly, indigenous people, physically challenged, and women in policymaking related to science and technology, and in the generation, transfer, and utilization of intellectual property (IP), especially for the benefit of the public.

The State shall also facilitate the transfer and promote the utilization of IP for the national benefit and shall call upon all RDIs that perform government-funded R&D to take on technology transfer as their strategic mission and to effectively translate results of government-funded R&D into useful products, processes, and services that will redound to the benefit of Filipinos, notwithstanding the revenue generated from intellectual property rights (IPRs) and technology transfer activities.

The State likewise acknowledges that the successful transfer of government-funded R&D results depends on the proper management of IP, development of capacity of

RDI to be competitive, and on enhancing interaction and cooperation with the private sector, particularly small and medium enterprises through collaborative and contract research based on equitable, fair access, and mutual benefit for all involved partners.

The State shall further establish the means to ensure greater public access to technologies and knowledge generated from government-funded R&D while enabling, where appropriate, the management and protection of related IP.

Finally, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creative environment, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products.

Section 3. Objectives. In accordance with the State Policies and the Philippine Technology Transfer Act of 2009, its IRR, and the Guidelines on IP Valuation, Commercialization and Information Sharing, the DOST IP Policy aims to define the roles of DOST and its attached agencies in the ownership, protection and management, utilization, transfer and commercialization of IPs generated from DOST-funded R&D activities.

CHAPTER 2 COVERAGE

Section 1. DOST as GFA. The DOST and some of its attached agencies perform the role of GFA. As a GPA, the DOST provides research grants and other technical and material support, from government appropriations and resources and those sourced from government-managed Official Development Assistance (ODA) funds. The following agencies perform said function: a) DOST Central Office (DOST-CO); b) sixteen (16) Regional Offices; c) three (3) Sectoral Planning Councils, namely: Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development (PCAARRD), Philippine Council for Health Research and Development (PCHRD), and the Philippine Council for Industry, Energy and Emerging Technology Research and Development (PCIEERD); d) one (1) Collegial and Scientific Body which is the National Research Council of the Philippines (NRCP); and e) four (4) Scientific and Technological Service Institutes, namely: Information and Communications Technology Office (ICTO), Philippine Science High School System (PSI-ISS), Science Education Institute (SEI), and the Technology Application and Promotion Institute (TAPI).

Section 2. DOST as an RDI. As an RDI, the following DOST agencies perform R&D activities: a) Advanced Science and Technology Institute (ASTI), b) Food and Nutrition Research Institute (FNRI), c) Forest Products Research and Development Institute (FPRDI), d) Industrial Technology Development Institute (ITDI), e) Metals Industry Research and Development Center (MIRDC), f) Philippine Nuclear Research Institute (PNRI), and g) the Philippine Textile Research Institute (PTRI). The Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), Philippine Institute of Volcanology and Seismology (PHIVOLCS), and the Philippine Science High School System (PSHSS) also perform the role of RDI.

Section 3. DOST as Parent Agency. The DOST, specifically the Office of the Secretary (OSEC), performs the role of a Parent Agency that exercises control and

supervision over its attached agencies functioning either as GFA or RDI, including the monitoring of their efforts and effectiveness in securing IP protection and pursuing IP commercialization towards national progress and inclusive growth.

Section 4. DOST as Enabler. The DOST shall institutionalize mechanisms as indicated in Chapter 6 of this Policy to ensure the effective implementation of the provisions of the Technology Transfer Act.

Section 5. Agencies and Personnel Covered.

1. All DOST agencies performing the functions of GFA and RDI as defined in this Chapter;
2. All DOST Officials, researchers and support staff undertaking research and/or creative activities pursuant to any program, project, grant, or contract under the auspices of the DOST system; and
3. All other institutions, research personnel, and stakeholders that implement DOST-funded R&D.

Section 6. Rights Covered. This Policy shall cover all types of IPRs recognized under Philippine laws, such as, but not limited to the IP Code of the Philippines (R. A. 8293) and the Philippine Plant Variety Protection Act of 2002 (RA 9168), and the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights) under the World Trade Organization, to include invention patents, utility models, trademarks and service marks, industrial design registrations, layout design (topography) of integrated circuit, copyrights and related rights, trade secret or undisclosed information, geographical indications, and new plant varieties.

Section 7. Matters Covered. This Policy shall cover all research, innovation and/or creative activities, tangible research properties with or without IP protection, whether for commercial or non-commercial purpose, supported by DOST funds or undertaken by DOST RDIs, and including all technology transfer arrangements.

For consistency purposes, definition of terms used in this Policy is provided in Annex 1[*].

CHAPTER 3 OWNERSHIP OF IP AND IPR FROM DOST-FUNDED R&D ACTIVITIES

Section 1. Ownership of IP. In recognition of the fact that agencies involved in R&D are in better position to identify the social and economic potentials and can better utilize the IPs and IPRs generated from their activities, the law provides that these agencies are given ownership to these IPs and IPRs. As such:

- a. IPs and IPRs derived and generated from R&D activities funded by DOST, whether such funding is in whole or in part, shall, in general, be vested in the RDI that actually performed the activities; and
- b. Copyrights over any work derived and generated by an RDI and funded by DOST whether such funding is in whole or in part, shall be vested in the RDI

whose researcher(s) actually authored the work pursuant to the Research Funding Agreement (RFA).

Section 2. Classification of Ownership.

a. Ownership of IPs and IPRs and Sharing of Revenues Derived from Work Jointly Done by Two or More RDIs

1. IPs and IPRs generated from complementing activities of two (2) or more DOST-RDIs and funded from their own budgets shall be jointly owned by them and any revenues generated shall be shared in a manner agreed upon by them in a Research Agreement (RA) or, if none, equally among themselves;
2. In case of collaborative research where two (2) or more RDIs conducted the activity funded by DOST, the concerned RDIs shall own the IPRs jointly or in a manner otherwise stipulated in the RA; and
3. In reaffirming RDIs ownership over these IPs and IPRs, the DOST was guided by the assurance that an RDI's primary mission in conducting an R&D activity is to advance public interest and the general welfare of people which, as a matter of policy, should take precedence over maximizing revenue earned from these IPs and IPRs.

b. Ownership of IPs and IPRs and Sharing of Revenues Derived from Work supported by Multiple Funding Agencies

1. Where funding is from DOST and other funding agency/ies, the RFA shall determine ownership of IP and sharing of revenues derived therefrom;
2. In case of funding from ODA, whether in full or in part, the terms and conditions of ODA shall be considered in crafting the necessary RFA; and
3. The provisions of this DOST IP Policy shall also be observed in all bilateral/multilateral R&D agreements which must be followed by all concerned parties.

c. Ownership of IPs and Sharing of Revenues Derived from Works of DOST scholars

1. IPs and IPRs from researches of DOST scholars in the undergraduate and graduate programs performed independently of the programs and/or projects of the DOST and its agencies and submitted as part of the requirements in the pursuit of their degrees shall be governed by the IP Policy of the local higher education institution (HEI) or the State College and University (SCU) where the scholars are enrolled;
2. IPs and IPRs generated from researches by DOST scholars in the undergraduate and graduate programs done as part of the programs and/or projects of the DOST or its agencies and submitted as part of the requirements in the pursuit of their degrees shall be jointly owned by the DOST and the HEI where they are enrolled, and shall share ownership and revenues in such proportion as agreed upon by them in a tripartite

- agreement between the DOST, the HEI, and the concerned scholar. This tripartite agreement must as far as practicable be executed prior to actual commencement of the research;
3. Ownership and revenue sharing over IPs and IPRs generated from research activities of DOST scholars in the PSHSS shall be equally owned and shared between the DOST scholar and the PSHSS in accordance with this DOST IP Policy;
 4. Ownership and revenue sharing over IPs and IPRs generated from research activities by DOST scholars in any HEI with an IP Policy, which is not part of the requirements in the pursuit of their degrees shall be subject to negotiation among the DOST, HEI and DOST scholar guided by this DOST IP Policy and its guiding principles; and
 5. Ownership and revenue sharing over IPs and IPRs generated from research activities by DOST scholars in any HEI without any IP Policy shall exclusively be owned and appropriated by DOST.

Section 3. Assumption of Ownership Rights by DOST . DOST shall assume ownership of IPs and IPRs, whether potential or otherwise, which were originally vested with the RDI under the following circumstances:

- a. When it involves protecting public interest, particularly national security, nutrition, health, or the development of other vital sectors;
- b. In case of failure of the RDI to disclose potential IPRs to the DOST;
- c. In case of failure of the RDI to initiate the protection of potential IPRs within a reasonable time from confidential disclosure to the DOST, which shall in no case exceed three (3) months from public disclosure; and
- d. In case the RDI, which has a corporate personality, ceases to become a Filipino corporation as defined in Article I, Section 4 (i) of the Act.

Section 4. Recovery of Ownership by an RDI. The DOST shall allow the RDI to recover the IP and IPR without prejudice to existing contractual obligations and negotiations on any of the following instances:

- a. That there is a viable commercialization taker for the IP as identified by the RDI. The interested commercialization taker shall submit a letter of intent to the DOST which shall also be endorsed by the RDI; or
- b. That the IP or IPR is an integral part of a portfolio of technologies owned and managed by the RDI.

The DOST may require the RDI to reimburse the expenses incurred in pursuing protection and commercialization of the IP being recovered.

CHAPTER 4

DOST AS A GOVERNMENT FUNDING AGENCY

Section 1. Protection of Government interest. The DOST shall protect government interests on IPs and IPRs generated from the R&D activities which it funds through suitable provisions in all RFAs it enters into. Such provisions shall