

This translation is provided for information purposes only. In the event of discrepancies between this and the original Portuguese version, the latter will prevail.

Intellectual Property Policy of Instituto Superior Técnico

PREAMBLE

Instituto Superior Técnico (herewith designated as IST), as a leading higher education institution, has, among others, the mission of ensuring constant innovation and the consistent progress of the Knowledge, Culture, Science and Technology Society, based on humanistic values as a frame of reference.

In the accomplishment of its mission, IST seeks to contribute to the improvement of the national economy, through technology transfer, innovation and the promotion of entrepreneurship.

The management of IST's Intellectual Property – its protection and economic exploitation – is an essential component in the accomplishment of this mission.

The present document sets the provisions for the management of IST's Intellectual Property, in compliance with the provisions defined in the applicable legislation, namely article 59 of the Portuguese Industrial Property Code, and articles 13 and 14 of the Portuguese Copyright and Related Rights Code and article 3 of Decree-Law n° 252/94, of 20 October. In accordance with the provisions defined in the aforementioned applicable law, this Policy determines the conditions for the exercise of the option right by IST, identifying the circumstances under which IST can assert its right to ownership of Intellectual Property rights, conditions the use of IST's resources to the assignment of intellectual property rights resulting from the use of those resources, establishes the criteria for the definition of special equitable remuneration defined in the aforesaid applicable law, imposes duties of collaboration in the assessment of potentially interested individuals and companies, and sets the conditions for the economic exploitation of the intellectual property rights.

This Policy reflects IST's strategy for the unequivocal support of technology transfer, which includes but is not limited to, the extraordinary incentives granted to IST's inventors, creators and authors as well as to the research units which they are associated with.

PART I PRELIMINARY ISSUES

Article 1 Object and Scope of Application

1. This Policy applies to all individuals mentioned in article 3.
2. The interpretation and application of this Policy, concerning the concepts of invention, creation and work, must be made in the light of the Portuguese Industrial Property Code, herewith designated as CPI, and the Portuguese Copyright and Related Rights Code.

Article 2 IST's Resources

1. For the interpretation and application of this Policy, unless otherwise stipulated, IST's resources are considered all tangible and intangible assets owned or administrated by IST and its departments and own research units, identified in IST's Statutes, including, but not limited to, infrastructures, equipment (including material, laboratories, libraries, computers and all movable assets), intellectual property and reputation in the national and international markets.
2. Unless otherwise decided by IST and the associated research unit, this Policy is fully applicable to all situations that involve the use of resources of IST's associated research units.

Article 3 Individuals

1. This Policy applies to the following individuals, herewith designated as IST's inventors, creators or authors:
 - a) Non-teaching and teaching staff, researchers, collaborators, students and scholarship holders from IST and from the research units defined in IST's Statutes;
 - b) Employees and students from other higher education and research institutions, who develop any type of activity at IST, with the use of IST's resources, except when otherwise stipulated or stated by law;
 - c) Other individuals whose activity presupposes the use of IST's resources, except when otherwise stipulated or stated by law.
2. The underlying principles of this article are applicable until the end of the fiscal year following the termination of the employment contract between an individual and IST or one of the research units defined in IST's Statutes, regarding inventions or creations disclosed during that period and resulting from work carried out while the employment contract with IST or one of the research units defined in IST's Statutes was still in force.

PART II INDUSTRIAL PROPERTY

Article 4 Ownership of Intellectual Property Rights and Remunerations

1. As a general principle, IST asserts its right to ownership of industrial property rights related to inventions and other creations subject to protection in accordance with the CPI, as well as its right to ownership of technical information with economic value, herewith designated as trade secrets, conceived and developed, totally or partially, by the individuals referred to in article 3 and with the use of the resources defined in article 2, except when this general principle is contrary to obligations imposed by a contract, agreement or any other similar collaboration instrument, signed by IST or by one of the units identified in IST's Statutes.

2. IST's ownership of the industrial property rights and trade secrets referred to in the aforementioned paragraph results from:

a) the exercise of the option right, defined in article 59, paragraph 3 of the CPI, in relation to inventions and creations subject to protection in accordance with the CPI, conceived and developed by teaching and non-teaching staff from IST or from one of the units identified in IST's Statutes with an employment contract in public functions, and when IST, in compliance with article 59, paragraph 3, point a) of the CPI, understands they should be remunerated in accordance with the present article.

b) the onerous transfer, to IST, of the part or the totality of the industrial property rights and trade secrets owned by the individuals, in exchange for the payment of the remuneration defined in the present article, in all the other cases in which the exercise of the option right referred to in the previous point a) is not legally admissible.

3. The use of IST's resources, as defined in article 2, by IST's inventors or creators, who are not in the situation in which the option right referred to in point a) of the previous paragraph is legally admissible, in the scope of initiatives where creative or inventive activities are foreseen, depends on their acceptance of this Policy and on the acceptance of the obligation to onerously transfer, to IST, the industrial property rights and trade secrets that result from the use of the aforementioned resources, in accordance with point b) of the previous paragraph, through the signature of a declaration.

4. The head of IST's research unit, with which the individuals defined in the previous paragraph collaborate, is responsible for collecting the aforementioned declarations.

5. For each invention or creation protected in accordance with the CPI as well as for each trade secret, the remuneration, related to the payment of industrial property rights, that IST's inventors or creators are entitled to, in accordance with the aforementioned paragraph 2, either for the exercise of the option right by IST or for the onerous transfer of those rights to IST, shall correspond to a percentage of the revenues that IST earns with the economic exploitation of those rights, after the deduction of the incurred and foreseen expenses with the constitution, maintenance, defense, promotion and commercialization of those rights, according to the following criteria:

- a) 80% until such revenues reach the accumulated amount of 500,000.00€;
- b) 50% of the amounts exceeding the accumulated amount of 500,000.00€ referred to in the previous paragraph, from the moment such amount is reached.

6. In case two or more of IST's inventors or creators have contributed to the conception and development of an invention or creation protected in accordance with the CPI or of a trade secret, the amount referred to in the previous paragraph shall be equitably distributed, unless other distribution percentages are defined as a result of an agreement established by the inventors or creators and the head(s) of the respective research unit(s). The agreement must be formally communicated to IST, in compliance with article 6 of this Policy.

7. In order to ensure that the provisions laid down in the previous paragraph are complied with, except when otherwise defined in a contract or agreement signed by IST or one of the research units defined in IST's Statutes, in the cases where IST is co-owner of an industrial property right or a trade secret with another institution, and there is asymmetry in the distribution of the remunerations, defined in paragraph 5, among IST's inventors or creators, as a result of the distribution of revenues to only some of them by the other institution that is also co-owner of that right, IST shall retain and distribute the part assigned to them among the other IST inventors and creators of IST. It is IST's inventors and creators' responsibility to inform IST, in compliance with article 6, about the remuneration systems, such as the one established in this Policy, which they are subject to due to their connection to another institution.

8. The right to earn the remunerations, related to the payment of industrial property rights, survives after the termination of the employment or the collaboration between IST, or one of the research units identified in IST's Statutes, and IST's inventor or creator.

9. The signature of the declaration referred to in paragraph 3 determines the acknowledgement, by the signatory, that no other amount or economic benefit, in addition to the remuneration defined in the present article, is owed to them for the exercise of IST's option right or for the transfer of the industrial property right to IST.

10. An inventor or creator of IST, who is simultaneously an employee at IST, or at one of the research units identified in IST's Statutes, may permanently transfer part or the totality of the remunerations owed to them, related to industrial property rights, as defined in the aforementioned paragraphs, to the research unit with which they are associated or to IST, for investment in technology transfer activities. IST's inventor or creator must declare their intention in writing, preferably when the information duty, referred to in article 6, is fulfilled.

11. The remaining 20% or 50% of the revenues referred to in paragraph 5 of the present article, retained as fair compensation for the use of IST's resources, shall be evenly distributed between:

- a) IST's research units with which IST's inventors or creators are associated;
- b) IST, for investment in technology transfer activities.

12. The transfer of the right or the aforementioned exercise of the option right, both defined in paragraph 2, may be revoked, by an order of the President of IST, issued upon the request of an inventor or creator of IST, based on the fact that such revocation maximizes the economic exploitation of the invention or creation protected in accordance with the CPI in which conception or development they were involved.

13. In case the aforementioned request is signed by only some of IST's inventors or creators involved in the conception and development of the invention or creation protected in accordance with the CPI, to which the request is related, the President of IST shall give the remaining inventors or creators the possibility to sign the request, before issuing an order.

14. The order referred to in paragraph 12 may impose conditions, namely the establishment of co-ownership, on the respective signatories, and its issuance shall take the sustainability of the technology transfer process into consideration.

Article 5

Industrial Property in Contracts and Agreements

1. All contracts and agreements signed by IST, or one of the research units identified in IST's Statutes, and other entities must contain provisions regarding industrial property, taking into consideration the provisions laid down in this Policy, whenever activities whose results may be protected by industrial property rights or trade secrets are foreseen.

2. In contracts and agreements, the following elements must be defined:
- a) the ownership of resulting inventions and creations;

- b) the responsibility for costs involved in the process of constitution, maintenance, defense, promotion and commercialization of the rights referred to in paragraph 1;
 - c) the process of decision for the definition or alteration of the form of protection, namely the territorial scope;
 - d) the commercial exploitation of the invention or creation and the distribution of the revenues;
 - e) the safeguard of IST's and IST's inventors or creators' rights, namely in case the rights are licensed or transferred;
 - f) the confidentiality and the conditions for disclosure and publication of the results achieved.
3. Some of the elements referred to in the previous paragraph may be defined in an addendum to the contract or agreement.
4. The moral rights of IST's inventors and creators must be safeguarded at all times.
5. The collaborator from IST, who is in charge of the execution of the contract or agreement, has responsibility for ensuring that the provisions laid down in the present article are complied with.

Article 6 Information, Cooperation and Confidentiality Duties

1. In compliance with article 59, paragraphs 3 and 8 of the CPI, IST's inventors or creators, from IST or from one of the units identified in IST's Statutes, are required to communicate to IST the existence of an invention or creation protected in accordance with the CPI, in which conception or development they have participated, with the use of IST's resources, within three months from the date the creation or invention is considered concluded, in which case they must refrain from disclosing and publishing information about the invention or creation, before obtaining written permission from IST, in order to avoid jeopardizing the possibility of protecting said invention or creation.
2. The obligation referred to in the previous paragraph is not applicable whenever IST's inventors or creators conclude, in good faith, and after consultation of the competent department when necessary, that the invention or creation has no potential for economic exploitation.
3. To enable the assessment of the invention or creation communicated to IST, regarding the possibility of economic exploitation, the respective inventors or creators may inform IST about third parties' interest in using the invention or creation, and about the conditions offered for its transfer or licensing.
4. Whenever the communication form does not contain the information referred to in the previous paragraph, the respective inventors or creators shall provide IST with all the documentation and information requested or considered relevant for the decisions regarding protection and economic exploitation of the communicated invention or creation.
5. The information duty, defined in the previous paragraphs, is applicable to all the other IST's inventors or creators, who are not from IST or one of the research units identified in IST's Statutes, whose access to and use of IST's resources, as defined in article 2, shall be denied in case of failure to abide by such duty, notwithstanding IST's indemnification rights.
6. The documents submitted for the communication referred to in paragraph 1 must be accompanied by the declaration referred to in article 4 and must contain all the information defined in that article, when applicable.
7. IST's inventors and creators' duty to cooperate in prospecting for third parties who may be interested in the economic exploitation of inventions and creations protected in accordance with the CPI, in relation to the invention and creation in which conception and development they have been involved, remains after the communication duty, referred to in paragraph 1, has been met.

8. IST's inventors and creators' cooperation duty also encompasses the timely provision of all the necessary technical information, to IST, for the constitution, maintenance, defense, promotion and commercialization of the industrial property rights related to the inventions or creations in which conception and development they have been involved.

9. In case there is more than one inventor or creator of IST, one of them shall be named responsible for ensuring that the provisions laid down in this article are complied with.

10. The individuals to whom this Policy applies, and who are involved in the process of protection and economic exploitation of IST's industrial property, must abide by a duty of confidentiality, specific confidentiality agreements being required in some cases.

Article 7 Legal Protection

1. It is IST's responsibility to define the most adequate form of protection for the inventions and creations owned by it, assuming all the inherent costs related to the process of legal protection and maintenance of the rights granted proportionally to its ownership share, except when otherwise decided, namely regarding the provisions set in article 4, paragraph 12, article 5 or article 8, paragraph 2.

2. In case IST's inventors or creators disagree with the form of protection to be applied for, or already applied for, due to the fact that they consider that it does not maximize the economic exploitation of the invention or creation, the provisions set in article 4, paragraph 12 must be taken into consideration.

3. IST may decide to not legally protect the research results, communicated in accordance with article 6, as industrial property rights, when their economic exploitation is maximized through the commercial exploitation of trade secrets.

Article 8 Exploitation of Industrial Property

1. The main aim of IST's technology transfer activities is to lay the ground for market players to create economic value from industrial property rights and trade secrets owned by IST.

2. The contractual instruments (such as licenses and others) to be established with market players to create economic value from industrial property rights and trade secrets owned by IST shall be guided by the following principles:

- a) Maximization of the economic value of IST's industrial property and trade secrets;
- b) Sustainability of IST's technology transfer process.

3. In compliance with the provisions laid down in the previous paragraph, IST shall encourage the creation of spin-offs as a form of economic exploitation of its industrial property rights and trade secrets.

4. For the same purpose as the one defined in article 6, paragraph 3, IST's inventors or creators may express their will to create a spin-off for the economic exploitation of the invention or creation communicated to IST.

5. In case an inventor or creator of IST is not associated with the creation of a spin-off designed to economically exploit an invention or creation in which conception or development they have participated, the President of IST shall ensure, in the order to be issued, that IST will retain the remuneration, related to the payment of an industrial property right, in compliance with article 4, paragraph 5, assigned to IST's inventors and creators associated with said spin-off, reassigning that amount to the aforesaid inventor or creator, who is not associated with the spin-off.

6. The President of IST's order, that authorizes the economic exploitation of an invention or creation protected in accordance with the CPI, through the creation of a spin-off, must ensure, as much as possible, the retention of the revenues referred to in article 4, paragraph 11.

Article 9 Decision Process

1. IST shall decide about the form of protection of the research results and will inform IST's inventors or creators about the possibility of disclosing the results related to the invention or creation within 30 days from the reception of the information considered complete, in accordance with article 6.

2. In the cases where IST decides to apply for legal protection, IST's inventors or creators shall cooperate with IST during the entire administrative process.

3. In the cases where IST decides to not apply for legal protection, it may grant this option to IST's inventors and creators, except in the situations defined in article 7, paragraph 3.

4. In the cases where IST decides to alter the form of protection of an industrial property right, namely with respect to the territorial scope, the provisions laid down in article 4, paragraph 12 must be taken into consideration.

5. The President of IST shall decide about all matters related to the management of IST's industrial property. Such competences may be delegated to the Provost for Business and Innovation.

6. The provisions laid down in the present article do not affect the provisions laid down in article 5 and article 8, paragraph 2.

PART III COPYRIGHT AND RELATED RIGHTS

Article 10 Ownership of Copyright

1. As a general principle, IST asserts IST's authors' right to ownership of copyright over literary, scientific or artistic works produced by them, except when those works were created as custom works ordered by IST, or to be disclosed or published in the name of IST, which will organize and direct their creation, in which cases the copyright over these works is assigned to IST.
2. The provisions laid down in the previous paragraph do not affect the duties defined in article 6.
3. The moral rights over a custom work are retained by the author of IST that created the work.
4. In the cases where the work was developed in the scope of or due to the execution of a contract or agreement signed by IST, or one of the units identified in IST's Statutes, and third parties, the contractual provisions defined for that effect shall be applied, taking account of the provisions laid down in the following article.

Article 11 Copyright and Related Rights in Contracts and Agreements

1. All contracts and agreements signed by IST, or one of the units identified in IST's Statutes, and third parties, shall contain provisions with regard to copyright and related rights, taking account of the provisions defined in this Policy, whenever activities whose results may be protected by copyright or related rights are foreseen.
2. The collaborator from IST, who is in charge of the execution of the contract or agreement, has responsibility for ensuring that the provisions laid down in the present article are complied with.

Article 12 Information Duty

1. Whenever an individual, to whom this Policy applies, develops a work whose copyright owner is IST, in compliance with legal or contractual provisions, they shall inform IST of that fact.
2. Following the information defined in the previous paragraph, IST shall make a decision on the protection and economic exploitation of the work.

Article 13 Publication, Disclosure and Remunerations

1. IST is responsible for the publication of literary and artistic works whose copyright is owned by it.
2. IST shall promote the literary and artistic works developed by IST's teaching staff, scholarship holders and students, in order to foster the development of intellectual creation.
3. IST shall promote the economic exploitation of literary, scientific and artistic works, with the collaboration of IST's authors, as long as they authorize their use by IST, including the assignment of use to third parties, through the signature of a declaration. IST's authors who are associated with the development of a literary, scientific or artistic work, whose copyright owner is IST, are also required to cooperate in the same terms as the ones defined in article 6.

4. Whenever the right is assigned to a third party, IST's author shall be entitled to remuneration, related to the payment of copyright, corresponding to a percentage of the revenues that IST earns with the economic exploitation of those rights, after the deduction of the incurred and foreseen expenses with the promotion and defense of those rights, according to the following criteria:

a) 80% until such revenues reach the accumulated amount of 500,000.00€;

b) 50% of the amounts exceeding the accumulated amount of 500,000.00€ referred to in the previous paragraph, from the moment such amount is reached.

The same percentages of remuneration, related to the payment of copyright, shall be attributed to IST's authors who develop a custom work ordered by IST. The provisions laid down in article 4, paragraphs 8 and 10, apply to these remunerations, with the necessary adaptations.

5. The remaining 20% or 50% of the revenues referred to in the previous paragraph, shall be distributed, according to the provisions defined in article 4, paragraph 11, with the necessary adaptations.

6. In case a literary, scientific or artistic work, that is totally or partially owned by IST or whose right of use is assigned to IST, has been developed by more than one of IST's authors, the provisions laid down in articles 4 and 6 are applicable, with the necessary adaptations.

**PART IV
COMPUTER IMPLEMENTED INVENTIONS AND SOFTWARE**

**Article 14
Applicable Provisions**

1. It is IST's responsibility to define the strategy of protection and economic exploitation of the research results that may lead to the development of computer implemented inventions or software, owned by IST, taking into account the different legal provisions according to which both are regulated.

2. Part II of this Policy is fully applicable to computer implemented inventions that can be registered and protected by industrial property rights. The provisions of Part II are also applicable, with the necessary adaptations, to software that is protected by copyright.

3. IST asserts its right to ownership of software developed by the individuals to whom this Policy applies, except when otherwise stipulated or stated by law. IST's ownership results from:

a) the provisions laid down in article 3, paragraph 3 of Decree-Law n^o 252/94, 20 October, when the programmer is hired by IST for a computing career;

b) the onerous transfer, to IST, of the part or the totality of the copyright owned by the individuals, in exchange for the payment of the remuneration defined in Part II of this Policy, with the necessary adaptations.

**PART V
FINAL AND TRANSITIONAL PROVISIONS**

**Article 15
Interpretation and Omissions**

1. This Policy shall be interpreted and construed in accordance with the applicable General Law and the general principles of law.
2. The President of IST may clarify specific issues regarding the application of this Policy by issuing an order.

**Article 16
Entry into Force**

This Policy shall enter into force immediately after its approval by the President of IST.

**Article 17
Revocation Norm**

1. This Policy revokes the Policy for Intellectual Property of Instituto Superior Técnico – approved by the Coordination Committee of the Scientific Board on 9 July 1997 and ratified by the Executive Board on 9 June 1998 – and the Internal Regulations: the Protection of Intellectual Property at Instituto Superior Técnico – approved by the Coordination Committee of the Scientific Board on 3 June 1998 and ratified by the Executive Board on 9 June 1998.
2. This Policy revokes and supersedes all other statutes in force at IST and the units identified in IST's Statutes, with respect to the regulation of intellectual property rights.

**Article 18
Revision**

This Policy may be subject to revision by the President of IST whenever such is considered adequate.