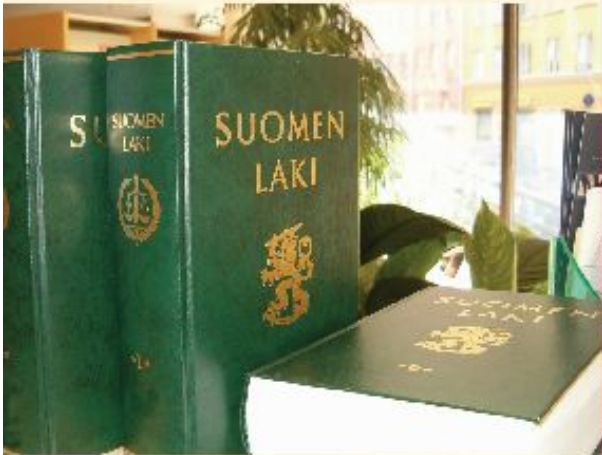


ACADEMY OF FINLAND



MOBILE RESEARCHERS'
GUIDE:
INTELLECTUAL PROPERTY
RIGHTS IN FINLAND

ACADEMY OF FINLAND
RESEARCH PROMOTION AND EXPERTISE

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IPR - what and why

You come across IPR daily: you see trade marks and brands, listen and watch works of art protected by copyright, use patented technology or medicine.

Intellectual property rights (IPR) can be divided in two categories: author's right or copyright with its neighbouring rights (e.g. performing) and industrial property rights, which include patents, utility models, trade marks, trade names, designs, the protection of integrated circuits and layout designs, and plant variety rights.

IPR are protected by international, regional and national law. This protection is carried out by various authorities using established registration and monitoring systems. In this legal and practical framework, however, the transfer of ownership and the conditions of use are usually determined by contracts.

All intellectual property rights are granted for a limited time. Unlike most industrial rights, copyright and neighbouring rights do not require registration to be valid.

In international law and in most national legal systems it is the author / inventor who can, in the first place, exclusively decide about the use of his work or invention. If there are no other legal restrictions, he can alone deny or allow the publication and use of his work / invention. Also, he is entitled to receive a share of the financial profit this use may bring.

The author or inventor often sells part of his economic rights to a publisher or a company, which can then use, manufacture and re-sell copies of the work / invention. Even so, the moral rights remain with the author / inventor: the right to be mentioned as the author (*droit de paternité*) and the right to object to the derogatory treatment of his work (*droit de respect*).

In this guide you will find information on and links to

- Finnish IPR issues concerning researchers
- the Finnish IPR registration procedures
- the Finnish IPR legislation and jurisdiction
- tips for finding more information

IPR in the past and future of a researcher

A researcher has certain rights to the publications and patented inventions he has made earlier (unless he has assigned his rights). He may also be bound by a non-disclosure agreement (NDA). These contracts cannot, however, prevent him from using his professional skills at a new employer.

During a research process new works are being created, which bring along new rights.

From the viewpoint of having, producing and using material protected by intellectual property rights, it is important for a researcher to understand his status. In Finland, researchers are in very different positions depending on where they work: as individual doctoral students, participants of graduate schools, in university projects with or without external funding or if they do research in companies or research institutes.

A researcher also uses other people's material protected by e.g. copyright or patents. He must be aware of the conditions of use.

Application for funding

When applying for a researcher's post, the applicant should pay attention to the possible exploitation of the future research results and to the agreements needed.

Before submitting a research plan, the applicant(s) should take into account that research might generate inventions with commercial potential. If funding is sought by a researcher team, the research plan should also contain a description of the mutual rights and obligations of the parties involved.

Links to Finnish funding organisations can be found on the Finnish home page of the Mobility Portal: http://www.aka.fi/index.asp?id=597bda0d53e84e13835bfacd7b9b3978&tabletarget=data_1&laytmp=aka_fi

Research vacancies in various countries can be searched on the European Mobility Portal site: http://ec.europa.eu/eracareers/index_en.cfm

University policies concerning inventions and IPR

In Finland, the ownership of inventions made in higher education institutions (HEI) was re-defined by legislation entering into force on 1 January 2007: *Act on the Right in Inventions made at Higher Education Institutions (369/2006)*. The Act covers employees in both universities and polytechnics. The Ministry of Trade and Industry provides an unofficial translation of the Act: <http://www.ktm.fi/index.phtml?l=en&s=1742>

University research is divided by the Act into two categories, collaborative and open. Collaborative research involves at least one party external to the HEI, and it includes liabilities related to the research outcome. In this case, the HEI is entitled to acquire the rights to the invention, but the inventor is entitled to a fair compensation, which is determined case-by-case. In open research, no parties outside the university are involved, and the inventor retains the rights to his invention.

Most universities have model contracts to be used in research projects. These model texts are usually available in the university's Intranet. Whatever project, contracts should be concluded at least on the following issues: research co-operation, the assignment of rights, confidentiality, and the transfer of material.

All universities and many polytechnics have an innovation liaison officer and/or a research officer. They help researchers and their teams in practical matters, like IPR agreements and commercialisation, including a disclosure notification to the HEI in case the research process produces an invention. A list of the innovation liaison officers in universities can be found (in Finnish) on the web site of the Foundation for Finnish inventions (Innofin): <http://www.keksintosaatio.fi/yhteystiedotiam.htm>

It is ultimately the leader of the research project who is responsible for the material and technology used in the research project not to be violating anyone's rights. The researcher, however, answers for his own know-how and the possible restrictions caused by an NDA or trade secret contracts.

IPR contracts of universities with other parties are negotiated by each university's administration, not by individual researchers or projects.

Copyright policies: researcher as author and user

Information as such can never be protected by intellectual property rights, but the way ideas and knowledge is expressed is protected by copyright.

Usually, the results of a research project are published as a book, article(s) or a report. These can be printed and/or electronic. The author has the copyright to his work. In case of a joint research and, consequently, often a joint publication, researchers should agree on the publishing methods and the division of possible income before the project starts. A written contract is recommended.

It is also possible to publish articles in Open Access journals or under a Creative Commons licence, which can allow the reader more, but explicitly defined, freedom to use the published material. The Directory of Open Access Journals, maintained by Lund University (Sweden) is located at: <http://www.doaj.org/>

Information on Creative Commons licensing:
<http://creativecommons.org/about>

In Finland, researchers have wide possibilities to find and use relevant publications for their own study. All municipal libraries as well as research libraries are open to everybody, including a restricted right to use their databases. A registered post-graduate student also has access to the databases subscribed by the university he is registered in. He may extract articles and other texts for his private use, i.e. as background literature for his study. (See "Information Search" section at the end of this guide).

The Finnish law on copyright was heavily revised in 2005. No translation of the new codified text is available yet (beginning 2007), but the Ministry of Education is working on it. Information on the issue can be found on their web site:
<http://www.minedu.fi/OPM/Tekijaenoikeus/?lang=en>

Links to Finnish universities

There are 20 universities in Finland: ten multidisciplinary universities, three schools of economics and business administration, three universities of technology, and four art academies. Links to their English home pages can be found on the web sites of the Ministry of Education as well as the Finnish page of the Mobility Portal of the European Commission maintained by the Academy of Finland:
<http://www.minedu.fi/OPM/Koulutus/yliopistokoulutus/yliopistot/?lang=en>
<http://www.aka.fi/index.asp?id=597bda0d53e84e13835bfacd7b9b3978>

There are 29 polytechnics, also called universities of applied sciences, in Finland. Links to their English home pages are provided by the Ministry of Education:
<http://www.minedu.fi/OPM/Koulutus/ammattikorkeakoulutus/ammattikorkeakoulut/?lang=en>

Research institutions and companies

In addition to IPR, all organisations also have other intangible assets, like their business methods, their reputation and the know-how of their employees. The value of a researcher to his employer depends on his possibilities and willingness to give his skills and knowledge to increase the intellectual capital of the organisation.

Each university, research institute and company has its own way of dealing with IPR. They may have their own IPR strategies, guidelines and conditions attached to the employment contract. In business world, much of this is regarded as trade secrets, so the employed researcher must also sign a non-disclosure agreement (NDA). In joint projects, also university researchers may need to sign an NDA.

A drop down menu of Finnish research institutes is available on the home page of the Mobility Portal:

http://www.aka.fi/index.asp?id=597bda0d53e84e13835bfacd7b9b3978&tabletarget=data_1&laytmp=aka_fi

A person working for a research institute or a company may make a (patentable) invention at work. In this case, the ownership of rights is defined by the *Act on the right in employee inventions*. Unless otherwise agreed, the inventor has the basic rights, but the employer is entitled to use the invention in the business and has the priority right to acquire more comprehensive rights to it. An unofficial translation, which is not completely up-to-date, is made by the Ministry of Trade and Industry:

<http://www.finlex.fi/en/laki/kaannokset/1967/en19670656.pdf>

It is important to agree on the ownership of future rights (copyrights, patents) before a study or R&D work begins.

When a researcher moves to another organisation

When a researcher moves to a new host organisation, whether within one country or across borders, he must be aware of what intellectual property rights he owns from his earlier work. Professional skill and know-how cannot, however, be restricted by contracts.

He cannot exploit the rights remaining with his earlier employers / host organisations without their permission. Consequently, the new host must agree with the appropriate rightholder on the possible use of the earlier intellectual contribution of the recruited researcher. To some extent, the scope of the researcher's earlier patent right or copyright depends on his home country and the applicable law (national, EU or international treaty) regulating the applicable rules on reciprocity.

On the other hand, if the researcher retains IP rights himself, he can (and must) agree on utilising these creations with his new host institution.

All these agreements must be concluded with appropriate persons having the mandate to represent the entire organisation, whether a HEI, research institute or a company.

Infringement of trademark, patent or author's right

Trademarks can be imitated or products counterfeited. Patented inventions can be used without a licence. Films or TV programs can be distributed through Internet without the permission of the rightholder. Music can be illegally copied and sold in pirate cd's and through P2P networks. Counterfeit medicine and fashion items can be imported and exported.

If the owner of a company name, a patent, a trade mark or a design considers that his right is being infringed in Finland, he should ultimately bring suit before the Helsinki District Court (Helsingin käräjäoikeus) unless he can settle the matter with the violator.

Information on the Finnish judicial system can be found on the web site of the Ministry of Justice (oikeusministeriö): <http://www.oikeus.fi/8854.htm>

Their district court page provides information and links: <http://www.oikeus.fi/15954.htm>

The Mobility Portal gives helpful links on the legal system of Finland and finding legal aid: http://www.aka.fi/index.asp?id=63E65DA7899644C8B1035113C455F474&data=1,00308B787886459385F296A5AFD4FA74,F194E35325134457AE7A7677A5672AB&tabletarget=data_1&MENU_2_open=true&laytmp=mobility_table_etu

Registration procedures in Finland

In Finland, the authority that takes care of the registration of societies, companies, trade names, trade marks, designs and patents is the National Board of Patents and Registration (NBPR), often called simply the Patent Office. Opposition against registration applications is handled in the office. Appeals against their decisions should be made to the relevant board of appeal of NBPR. The final instance of appeal is the Supreme Administrative Court.

Registration of a trade mark gives the owner (who can be physical or judicial person) the exclusive right to use the mark as a symbol for goods or services in Finland. To be registered, a trade mark must be distinctive, not confusable with other marks or trade names, and not offensive. It can be renewed infinitely. More information on the requirements, the registration procedure, the forms, fees etc. can be found on the web site of NBPR:

<http://www.prh.fi/en/tavaramerkkit/tavaramerkkilyhyesti.html>

If you want to establish a business or check whether a company or society with a certain name exists, you can find the necessary information in the trade register of the NBPR:

<http://www.prh.fi/en/kaupparekisteri.html>

If you have made an invention and want to apply for a patent, the procedures are explained on the patent pages of the NBPR. To be patentable, an invention must be new, inventive and industrially applicable. Novelty requirement means that the invention absolutely must not be publicly known before the filing. A patent is valid 20 years from the date of the filing. More information:

<http://www.prh.fi/en/patentit/hakusuomi.html>

A design can have some IP protection even without registration, but registration gives more comprehensive protection. Information on this subject is available on the web site of the NBPR: <http://www.prh.fi/en/mallioikeudet/mallioikeuspahkinankuoessa.html>

A Community trademark (CTM) or design (CD) is valid in all the member states of the European Union. Therefore, a mark or design to be registered in Finland must not be confusable with any Community trademark or design. Applications for a CTM or DC are submitted at OHIM (Office for the Harmonization of the Internal Market (Trademarks and Designs)). More information: <http://oami.europa.eu/en/default.htm>

Works of art, literary works, computer programmes and databases are protected by author's right (copyright) and performers' works by neighbouring rights. The author has the right automatically without any registration. Copyright protection covers the way of expression and the form or shape of a work, never an idea, information or contents as such. Finnish copyright organisations administer and supervise the rights of copyright holders and neighbouring rights holders. Some of them function as collective societies; they collect the remuneration and distribute it to the right holders according to an agreed formula. Information on copyright in Finland with appropriate links is available on the web site of the Ministry of Education: <http://www.minedu.fi/OPM/Tekijaenoikeus/?lang=en>

Domain names are usually registered via agents authorized by ICANN (Internet Corporation for Assigned Names and Numbers), which is responsible for the global coordination of the Internet's system of unique identifiers: <http://www.icann.org/general/links.htm>

Domain names with the generic top level domain (GTLD) ".eu" can be applied for at a registrar accepted by EURid. More information on EURid's web site: <http://www.eurid.eu/en/general/>

Domain names with the generic top level domain (GTLD) ".fi" can be applied for at Finnish Communications Regulatory Authority (FICORA). Instructions and application forms: <https://domain.ficora.fi/fiDomain/aca.aspx>

Legislation and case law

International and EU legislation on IPR

The EU legislation and the judgments of the European Court of Justice constitute an inseparable part of the Finnish legal system. A gateway to the EU rules and law on intellectual property can be found via the portal of the Internal Market department (DG) of the European Commission: http://ec.europa.eu/internal_market/top_layer/index_52_en.htm

On the EU level, the Court of Justice of the European Communities (ECJ) mostly gives preliminary rulings on the interpretation of IPR directives whereas the Court of First Instance (CFI) handles competition cases and appeals on the decisions of the Board of Appeal of OHIM (Office for the Harmonization of the Internal Market). You can search cases e.g. by their number, a free search word or subject (approximation of law, intellectual property). <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

Moreover, Finland is bound by the international agreements it has signed. World Intellectual Property Organization WIPO is responsible for the management of most multinational IPR treaties. They and the contracting parties are to be found at the address:

<http://www.wipo.int/treaties/en/>

Domain name disputes can be submitted to UDRP, Uniform Dispute Resolution Procedure. ICANN has approved a few organisations to work as dispute resolution service providers. More information with relevant links:

<http://www.internic.net/faqs/udrp.html>

All member states of the WTO (World Trade Organization) are also bound by TRIPs, the Agreement on Trade Related Aspects of Intellectual Property Rights. Its text is available e.g. on WTO's web site:

http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

Finnish national legislation

Finnish legislation is available in the free online databank Finlex in Finnish. Some English translations of certain Acts can be found in Finlex: <http://www.finlex.fi/en/laki/kaannokset/>. These include:

- Patents Act (550/1967)
- Trademarks Act (7/1964)
- Trademarks Decree (296/1964)
- Act on the Right in Employee Inventions (656/1967)
- Decree on the Right to Employees' Inventions (527/1988)
- Act on the Exclusive Right in the Layout-Design (Topography) of an Integrated Circuit (32/1991)
- Decree on the Exclusive Right in the Layout-Design (Topography) of an Integrated Circuit (946/1991)
- Act on Utility Model Rights (800/1991)
- Decree on Utility Model Rights (1419/1991)
- Act on Plant Variety Right (789/1992)
- Decree on Plant Variety Right (907/1992)

N.B. Translations do not always contain the latest amendments. The date of last amendment is mentioned in the search result.

Unofficial translations are also available on the web sites of the competent authorities.

Legislation on *trademark, design, patent and utility models* is to be found on the web site of the NBPR:

<http://www.prh.fi/en/tavaramerkki/lainsaadanto.html> (trademarks)

<http://www.prh.fi/en/mallioikeudet/lainsaadantoa.html> (designs)

<http://www.prh.fi/en/patentit/lainsaadantoa.html> (patents)

<http://www.prh.fi/en/hyodyllisyysmallit.html> (utility models)

Act on the Right in Inventions made at Higher Education Institutions (369/2006) on the web site of the Ministry of Trade and Industry:

<http://www.ktm.fi/index.phtml?l=en&s=1742>

Information on legislation concerning .fi-domain can be found on:

<http://www.ficora.fi/en/index/saadokset/lait.html>

Judgments

The IPR judgments of lower courts are scantily available in the Internet except for the cases of Market court, which are there only in Finnish:

<http://www.finlex.fi/fi/oikeus/mao/>

The database of IPR University Center contains mostly summaries (in Finnish) of IPR judgments of the Court of Appeal of Helsinki and the Supreme Administrative Court. If you understand Finnish, you can register on the page:

https://www.asiakas.org/iprinfo2005/page.php?page_id=85

The judgments of the Supreme Court and the Supreme Administrative Court which are considered to have value as preliminary rulings are published in Finlex databank. Other decisions are only summarised in a few sentences. The language is usually Finnish, sometimes Swedish:

<http://www.finlex.fi/en/oikeus/> .

Practical help in IPR matters outside universities

The web site of Finnish science and technology information service Research.fi contains news, statistics, other information and links.:

<http://www.research.fi/en>

In addition to its web site and library, the Finnish Patent Office NBPR offers consultation services in patenting. See more closely on their web site:

<http://www.prh.fi/en/patentit/neuvonta.html>

The Foundation for Finnish Inventions (Innofin) serves as a link between innovators and industry. It provides e.g. evaluation and promotion of inventions as well as financial support, search for partners and legal assistance in licensing negotiations and preparing agreements. More information on the Foundation on its web site:

<http://www.innofin.com/>

In patenting matters it is also possible to seek help from a patent agency. A list of Patent Attorneys with their contact data is to be found via the web site of the Association of Finnish Patent Attorneys (SPAY):

<http://www.spay.fi/hal/index.php?l=en&m=10>

The website of the multinational Zwolle Group 'Copyright Management for Scholarship' deals with copyright ownership in higher education, university policy on copyright and arrangements between universities, authors and publishers. The site is no longer updated, but contains useful information.

<http://www.surf.nl/copyright/>

The online service of the British Open University Library provides useful pages "Information skills for a researcher". The section "Referencing and rights" contains practical advice on IPR.

<http://www.open.ac.uk/infoskills-researchers/>

Information on IPR issues, especially EU projects and European news is available at the IPR Helpdesk pages:

<http://www.ipr-helpdesk.org/controlador/principal?seccion=principal&len=en>.

<http://www.ipr-helpdesk.org/controlador/recursos/faqs?seccion=faqs&tipoListado=all&len=en>

Information search

Any student of a Finnish university has access to its library catalogues, e-dictionaries, hundreds of e-journals and to certain databases. Each university has a customized version of the library portal Nelli. You can get acquainted with it by reading the general Nelli a guide:

http://www.helsinki.fi/kirjastot/esittely/julkaisut/oppaat/Nelliportal_eng.pdf

Even if you are not registered in a university, you are allowed use university libraries, but your access to databases is limited. Library staff can help you, nevertheless, even in information retrieval. A list with links to the Finnish research libraries:

<http://www.lib.helsinki.fi/tilke/indexeng.html>

The Library of Parliament is an extensive research library open to everyone. The collections focus on legal and political/social material. In addition, the library maintains a virtual link library containing annotated links to judicial and governmental web sites all over the world. You can search by country or by topic:

<http://www.eduskunta.fi/kirjasto/Elki/elkieng.html>

The Library of Statistics is also open to everyone. Its collections cover statistics and journals from all over the world. Many of their databases are online free of charge. The library also maintains WebStat, annotated links to statistical information worldwide:

http://www.stat.fi/tup/tilastokirjasto/index_en.html

The Library of the National Board of Patents and Registration is open to the public. Its catalogue is searchable on Internet. Information on the library and a direct link to the catalogue:

<http://www.prh.fi/en/tietoaprhsta/kirjastolukusali.html>

<http://193.229.70.56/ENG/index.htm>

Vacancies, possibilities for funding etc. can be found on the Mobility Portal:

http://ec.europa.eu/eracareers/index_en.cfm

IPR University Center is an institute of five Finnish universities. The Institute coordinates and promotes education of and research into issues of intellectual and industrial property rights. It also provides help in information search in IPR issues.

http://www.iprinfo.com/page.php?page_id=41