



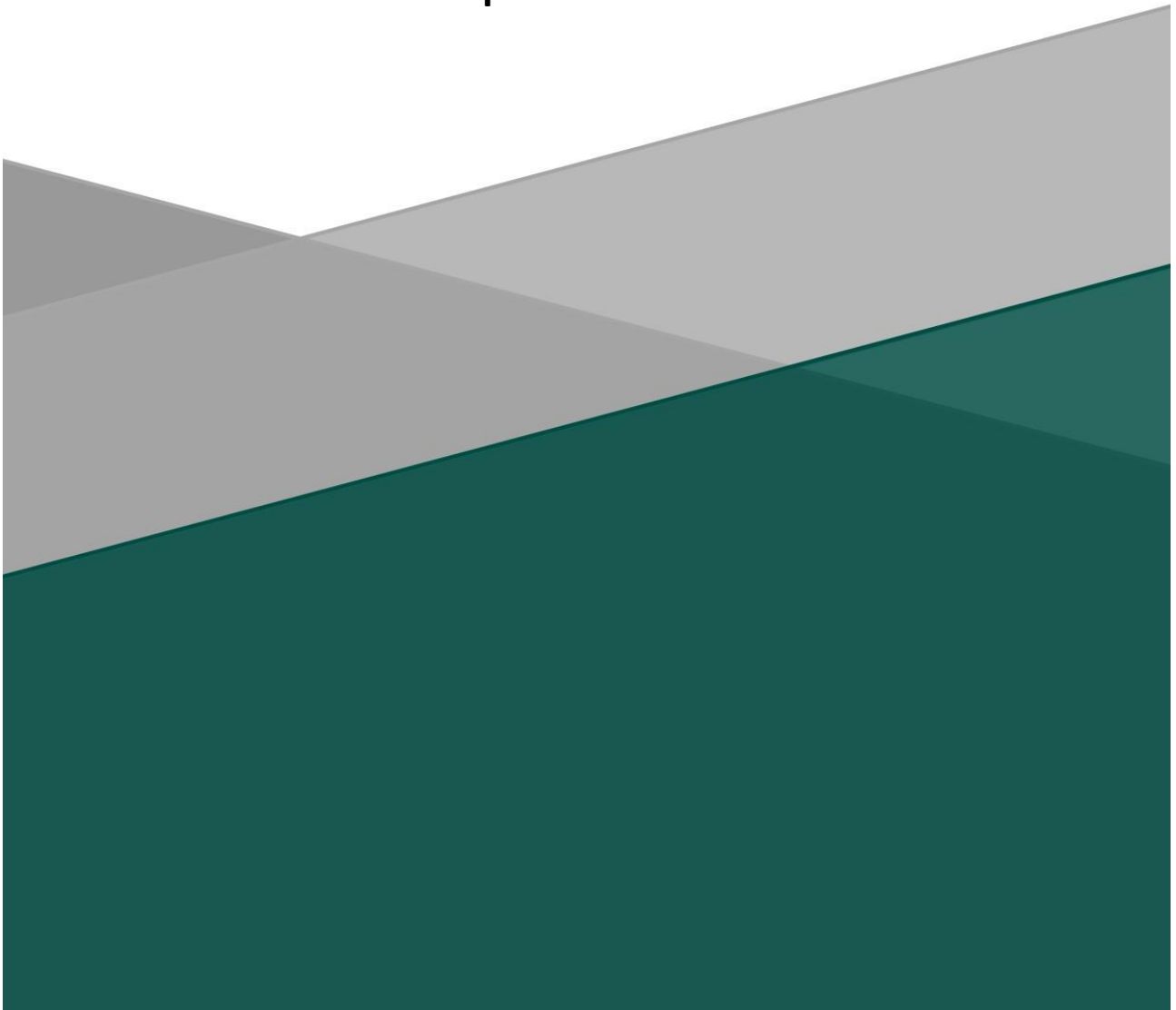
An Roinn Cosanta  
Department of Defence



Óglaigh  
na hÉireann  
DEFENCE FORCES IRELAND

## **The Department of Defence and the Defence Forces**

### **Policy on Intellectual Property in the area of Research, Development and Innovation**



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## Introduction

The objective of this Policy is to establish the principles of ownership, protection processes and the professional management of the Intellectual Property (IP) arising from:

- i) Defence Organisation<sup>1</sup> employees, and
- ii) Defence Organisation collaborations with Enterprise and Research Institutes on research, development and innovation (R&D&I)<sup>2</sup> activity;

The White Paper on Defence<sup>3</sup>, reaffirms the Defence Organisation's commitment to collaborate with Irish enterprise and research institutions where this engagement contributes to the development of capabilities within the Defence Forces. The White Paper also refers to the requirement to develop an intellectual property policy for the Defence Organisation.

To-date, the Defence Organisation has participated in a wide range of activities with Irish-based institutions in relation to the development of research, innovation, technology and education/training initiatives, which contributes to the Defence Forces' capability development. These collaborations also aim to support innovation, growth and jobs in Irish based industry.

Engagement by the Defence Organisation in the area of research, development and innovation is managed by the Department of Defence through the Defence Enterprise Committee chaired at Assistant Secretary level and comprising Defence Organisation civil and military staff and representatives of Enterprise Ireland.

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<sup>1</sup> The term "Defence Organisation" refers to the Department of Defence and the Defence Forces

<sup>2</sup> Communication from the Commission - Framework for State aid for research and development and innovation (2014/C 198/01)

<sup>3</sup> White Paper on Defence published August 2015

## What is Intellectual Property?

Knowledge Transfer Ireland<sup>4</sup>, the national office with responsibility for the oversight of knowledge and technology transfer describes Intellectual Property as a term used to describe the rights which protect an organisation's ideas and other forms of intellectual creation. It is made up of a number of different rights. Some rights have to be registered to be effective, others arise automatically. The six main categories of IP (and for the purposes of this Policy) are as follows:

**Know-How** is any secret and technical information, which is valuable and identifiable, including results, experimental techniques, formulae etc., and can be as equally important and valuable as any other form of IP once the technical information is kept confidential.

**Designs** protect the visual appearance of objects or designs applied to them e.g. a piece of equipment. They can arise automatically or can be registered and will last for different periods of time depending on whether the design is registered or unregistered.

**Patents** protect inventions for products or processes. The invention must not have been publicly disclosed before, must be inventive and must be capable of industrial application.

**Copyright** protects items such as original written works, diagrams, charts, computer code or photographs. Copyright arises automatically once your work has been expressed and recorded in permanent form. It must contain some element of creativity and originality.

**Database and Database rights** protect compilations of works or data where there has been a substantial investment in obtaining and verifying the contents of the database. There is no need to register a database and database rights can last for up to 15 years.

**Trademarks** can arise automatically or can be registered and can last indefinitely. Their value lies in the fact that they denote the origin of the products to which they relate.

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<sup>4</sup> [http://www.knowledgetransferireland.com/About\\_KTI/](http://www.knowledgetransferireland.com/About_KTI/)

## Objectives of an Intellectual Property Policy for the Defence Organisation

This Policy establishes principles and practices for determining and safeguarding the interests of the Defence Organisation arising from its participation in research and development projects.

The purpose of this Policy is to:

- establish the IP ownership position clearly and simply (and subject to the terms and conditions of a collaboration agreement)
- create an IP environment which will encourage industry and learning institutes to collaborate with the Defence Forces resulting in benefits to the Defence Forces and to the Irish economy
- promote the Defence Organisation as a source of Research, Development & Innovation expertise
- stimulate innovation where opportunities arise across the Defence Organisation within the resources available at the time
- safeguard the legal, financial and reputational interests of the Defence Organisation
- raise awareness of IP issues amongst all staff in the Defence Organisation
- create clarity on IP generated through partnerships with industry/research institutes
- establish ownership of IP created by Defence Organisation personnel in the course of their duties/studies
- ensure that a Collaboration Agreement (see Part 2 on Collaboration Agreements) is in place for all collaborations between the Defence Forces and industry/research institutes prior to the project progressing beyond the sensing and exploring stage<sup>5</sup>
- clarify the Defence Organisation's policy regarding endorsement/media releases.

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<sup>5</sup> Sensing and Exploring is defined as the scoping discussions that take place at the initial stage of collaboration. Once these discussions reach the point of where tangible project activities, inputs, resource allocation and outputs are being discussed, approval must be sought from the Department of Defence and a Collaboration Agreement negotiated and entered into with enterprise and/or research institutes.

## Ownership of Intellectual Property

### **Part 1. Employees**

This Policy sets out that the Minister for Defence owns all Intellectual Property or proprietary information generated by personnel of the Defence Organisation in the course of their duties in the Defence Organisation.

The Minister for Defence owns all Intellectual Property or proprietary information generated by personnel of the Defence Organisation in the course of any studies paid for by the Defence Organisation. This includes any IP generated through theses, or other research and innovation practices completed by personnel on career/third level courses which are resourced by the Defence Organisation.

In the event the Defence Organisation commissions an employee to carry out any special duties or projects outside their normal duties, the employees will be required to assign the IP rights of their special duties to the Defence Organisation. Defence Organisation personnel should be aware that confidential “know-how”, design rights and database rights are of particular importance to IP in the Defence Organisation.

All Defence Organisation personnel are advised that individual members of the Defence Forces and Department of Defence employees have no ownership rights to any of the intellectual property developed during the course of their duties or in the course of any studies paid for by the Defence Organisation and such personnel will be required to assign IP to the Department. All those who generate IP as part of their work should make and keep clear and adequate records in order to support a claim for IP that may arise. The Defence Organisation will put in place measures to ensure that the policy is disseminated to all personnel. These measures can be revised and reviewed during the life of the policy.

Innovation is currently recognised and rewarded in the Defence Organisation. The Chief of Staff’s Innovation Awards recognise innovative expertise within the Defence Forces and offers Defence Forces personnel an opportunity to shape future capability development. The Civil Service Excellence and Innovation Awards is an annual event aimed at recognising staff excellence and innovation in the Civil Service.

In the event that Defence Organisation Personnel collaborate with a third party, then the provisions below in Part 2 apply.

## **Part 2. Collaboration with Enterprise and Research Institutes on research, development and innovation**

The Defence Organisation and the industry/research institute(s) are to sign a collaboration agreement before the commencement of any R&D&I project. This collaboration agreement will govern the terms and conditions of the project.

Where IP is generated as a result of collaboration with third parties (foreground IP), any Collaboration Agreement between the parties will in general provide that such IP rights will accrue to the third party, subject to any rights of disclosure and/or confidentiality and use for Defence Organisation or government departments' purposes (as applicable). However, the Department of Defence will manage and assert rights over the background intellectual property brought to a particular project by the Defence Organisation.

The Defence Organisation's primary efforts will be focussed on the managing and asserting of the Background IP which would provide the Organisation with a level of recognition for what it brings to the project.

In general, the Collaboration Agreement will govern the terms under which the project will be conducted between the Defence Organisation and a third party, and may contain the following:

- details of the project to be undertaken, timescales and identify who will carry it out – the Programme Plan
- management and oversight of the programme
- termination provisions
- expected capability benefit to the Defence Organisation (a capability development contribution should be expected given the limited capacity that exists within the Defence Forces for industrial promotion)
- any other expected benefit to either the Defence Organisation and/or the State
- identification of risks that may arise during the course of the project
- identification of ownership of IP developed during the project
- mechanisms for the identification and protection of IP developed during the project
- management of IP, including payment of associated costs
- licensing of pre-existing IP introduced into the collaboration and owned or licensed by the parties involved, (Background IP)
- reference to the Defence Organisation's endorsement policy
- liability and indemnity provisions

- reference to ownership of IP in relation to individual members of the Defence Forces
- no corporate endorsements by the Defence Organisation, or media releases by the third party.
- a Non-disclosure clause
- data protection provisions FOI provisions

If the Defence Organisation would like to proceed with a Project beyond the terms set out in the Collaboration Agreement, such a decision will be made by the Minister (as appropriate).



## Non-Disclosure Agreement

A Non-Disclosure Agreement (NDA) is a legally enforceable agreement routinely entered into by organisations involved in any of a variety of contractual situations. The NDA would usually provide some information of the scope of the subject area covered, prohibit each party from sharing information and materials with third parties and prohibit each party from using the other's information for their own internal purposes.

Members of the Defence Forces are not authorised to sign a confidentiality agreement or a NDA on behalf of the Minister for Defence. Any such requests received should be referred to International Security and Defence Policy Branch/Strategic Planning Branch for review and approval by the Department.

## Corporate Endorsement/Media Releases

The work undertaken by the Defence Enterprise Committee or by members of the Defence Organisation may lead to requests from a researcher, developer, manufacturer or inventor of a particular product to be endorsed by the Defence Organisation. An endorsement may refer to a testimonial (a written or spoken statement) endorsing, promoting or advertising a product. It could also include the use of the Defence Forces or Minister for Defence trademarks (such as name or logo) by a company when promoting its product. A third party or company may not use Defence Forces or Minister for Defence trademarks without the written consent of the Minister.

A statement, once approved by the Principal Officer, International Security and Defence Policy Branch, can be communicated via the Defence Organisation's media offices, which may describe the Defence Organisation's experience with a particular product based on a factual account of the collaboration, and such statements shall not constitute a testimonial of the product or service.

## Management and Staff Responsibilities

As detailed in the Defence Enterprise Strategy, innovation cells<sup>6</sup> are to be established in each Formation, as a single source of advice and conduit for Research and Innovation (R and I) proposals.

All Unit Commanders will ensure that their staff can access the content of the Policy. Commanders are also responsible for bringing the content of this Policy to the attention of staff and for providing the means, documentation and advice, for staff to develop and record an idea, concept or invention.

Members of the Defence Forces should keep accurate and detailed records of their research, development and innovation work, including signing and dating, throughout a collaborative process or as part of an individual's research. These records are the confidential property of the Defence Organisation.

The Defence Forces through their collaborative research work should ensure that they do not infringe the intellectual property rights of any of their collaborative partners. If any doubts arise, the matter should be brought to the Defence Enterprise Committee.

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<sup>6</sup> Formation R&I Cell responsibilities will be undertaken in addition to normal responsibilities

## **Responsibility for the Management of this Policy within the Defence Organisation**

The Principal Officer (PO), International Security and Defence Policy (ISDP) Branch, in conjunction with the Director, Strategic Planning Branch (SPB) is responsible for the implementation of all aspects of this Policy. The Departmental nominated Assistant Secretary, following consultation with Deputy Chief of Staff (Support), is responsible for all aspects of the IP Policy, under the authority of the Minister.

ISDP will maintain a central database of collaboration agreements.

Any queries in relation to this policy document should be forwarded to the Principal Officer, International Security and Defence Policy Branch – [isd@defence.ie](mailto:isd@defence.ie)

### **Effective Date**

This policy shall have effect as and from 31-10-2018.