

ANNEX I

DEFINITION OF INTELLECTUAL PROPERTY

1 Intellectual Property

The IT Sligo defines intellectual property as the tangible or intangible results of research and development. Intellectual property allows creativity and innovation to be captured and owned in the same way as physical property can be owned. Intellectual property includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information and software, whether or not patentable or otherwise susceptible to intellectual property protection, including technology and materials in their tangible form.

1.1 Patents

Patents are intended to protect new and improved products and processes that have some technical innovation and are capable of industrial application.

A Patent gives its owner the right, for a limited period, to stop others from making, using or selling the invention without the permission of the owner in a particular territory. Patent rights are territorial in that an Irish Patent does not give Patent rights outside Ireland. Most Patents are for improvements in a known technology rather than the devising of a completely new technology.

1.2 Trademarks

Trademarks are intended to protect a brand's identity so as to distinguish the goods or services of one trader from those of another trader. A Trademark may be a word, logo, slogan, colour, three-dimensional shape and even a sound or smell. The Trademark must be capable of being represented in words and/or pictures.

1.3 Industrial Design and Unregistered Design Right

The Industrial Designs Act 2001, which brings Irish law into compliance with EU Directive 98/71/EC, came into force on July 1, 2002. Designs cover the appearance of a product, either the whole or a part, resulting from such features as lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. The term **product** embraces any industrial or handicraft item. The term **product** has a wide meaning that includes packaging, get-up and graphic symbols (e.g. Desktop icons) etc.

Registration is not available for features of a design which are dictated by the technical function of the product. The new law contains a *must fit* exclusion under which it is not possible to obtain registration for features which are dictated by the need for the product to fit another. However, modular products, i.e. made up of several components which can be fitted together in different ways, are protectable.

Design Registration gives the owner the right, for a limited period (up to 25 years, with renewals every 5 years), to stop others from making, using or selling a product to which the design has been applied, or in which it is incorporated.

From early 2003, it will be possible to obtain a *Registered Community Design* covering all member states of the EU. Registered Community Design Applications will be handled by the office (OHIM) which currently handles Community Trade Marks.

An *unregistered design right* is available at Community level and eligibility for protection is the same as for a Registered Design. The right comes into existence automatically by the mere fact of making the product incorporating the design available to the public within the European Community. Protection is limited to 3 years and to preventing the use of copies of original designs. It is important to note that a Registered Design gives exclusivity whereas an *unregistered design right* can only be enforced where copying can be proved.

1.4 Confidential Information and Know How

Protection for confidential information and know-how arises from the law of confidentiality. The confidential information may be know-how associated with a Patent or a Patent Application, or material in existence before, for example, a Patent Application is filed, or material already protected by another form of intellectual property, for example, copyright.

1.5 Domain Names

A domain name is a unique address on the Internet. There are various generic TLDs, such as .com and .biz, as well as, ccTLDs (Country code), such as ".ie".

1.6 Tangible Research Property

This includes biological materials such as cell lines, plasmids, hybridomas, monoclonal antibodies and plant varieties; computer software, data bases, integrated circuit chips, prototype devices and equipment, circuit diagrams; and analytical procedures and laboratory methods, whether or not intellectual property protection is available through Patents and/or copyright or otherwise.

1.7 Other Forms of Intellectual Property

Other forms of intellectual property include, but are limited to, database right for certain types of database; protection for semi-conductor topographies; plant breeders' rights in certain plant varieties; and protection against unfair competition under "passing off" law.

The IP Policy is applicable to *IT Sligo Intellectual Property* that is owned by the IT Sligo for any of the reasons outlined below:

- It is developed by IT Sligo Personnel in the course of their normal or specifically assigned duties either when intellectual property could be reasonably expected to result from the carrying out of those duties and/or, at the time the intellectual property was developed, there was a special obligation on the relevant IT Sligo Personnel to further the interest of IT Sligo.

- The intellectual property arises out of funded or non-funded research where such research has, in the opinion of IT Sligo, made use of the equipment, facilities, IT Sligo Assets and other resources of the IT Sligo unless such action was precluded by prior agreement between the IT Sligo and third parties.
- If it is a condition of a research contract with a third party that the IT Sligo should have ownership of the intellectual property arising from the contract.

Maker of database

Section 322 (2) of the 2000 Act provides that: "Where a database is made by an employee in the course of employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary".

□ PATENTS ACT 1992 (1992 Act)

Right to patent

Section 16(1) of the 1992 Act provides that: "The right to a patent shall belong to the inventor or his successor in title, but if the inventor is an employee the right to a patent shall be determined in accordance with the law of the state in which the employee is wholly or mainly employed or, if the identity of such state cannot be determined, in accordance with the law of the state in which the employer has his place of business to which the employee is attached."