

Legal tools to stimulate IP management in Academia 促进学术界知识产权管理的法律 工具

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Do we need to regulate IP management?
我们需要规范知识产权管理吗?

What should be regulated?
规范对象?

On which level?
规范水平?

Do we have any evidence which regulatory steps
are effective?
我们是否有证据表明规范措施有效?

The model solution - Bayh-Dole Act 1980

解决方案模板 - 1980年《拜杜法案》

- **Rationale 理由**
- **Solution applied 解决方案**
 - University ownership 高校所有权
- **Unquestionable success (?) 毋庸置疑的成功 (?)**
 - Contribution to GDP (591 billion USD) and gross industrial output (1,3 trillion USD) from 1996 to 2015
 - 从1996年至2015年, GDP贡献值5910亿美元, 工业总产出贡献值1.3万亿美元
 - Increase in patenting
 - 专利授权增加
 - Incentives for spin-off creation
 - 刺激高校衍生企业
 - Basic research affected?
 - 基础研究受到的影响?
 - The effect of increasing commercialization or the cause?
 - 促进商业化的影响或原因?
- **The effect of emulation of leading solution 领先解决方案的仿效效应**
 - Bayh-Dole alike regulations across the world 与拜杜法案类似的法规遍及全球

IP management 知识产权管理

- **Creating opportunities 创造机会**
- **Evaluation 评价**
- **IP protection 知识产权保护**
- **Exploitation 利用**
- **Awareness building 意识培养**
- **IP identification 知识产权识别**
- **Evaluation 评价**
- **Protection 保护**
- **Transfer 转移**
- **Monitoring/Enforcement 监督 / 执行**

Possible points for the regulation

可能的规范要点

Raising IP awareness 提升知识产权意识	eg. obligatory IP courses for students and/or academics 例：高校学生和 / 或教研人员必修课程
IP Identification 知识产权识别	eg. obligatory notification 例：强制性通知
Evaluation 评价	eg. compulsory valuation 例：强制性估值
IP protection 知识产权保护	eg. entitlement/ownership fees reduction 例：权利 / 所有权费减少
Transfer 转移	eg. obligatory / recommended commercialization routes benefit sharing rules 比如，强制性 / 建议性商业化路径收益共享规则

Fundamental issue to be settled - ownership of the research results

待解决的根本问题 - 研究成果的所有权

- **Professor's privilege vs. institutional ownership**
- **教授特权与机构所有权**
- **Europe 欧洲**
 - **No change 无变化:**
 - Bayh-Dole-like legislation: United Kingdom, Spain, Turkey, Belgium
 - 与拜杜法案类似的立法: 英国、西班牙、土耳其、比利时
 - Professor's privilege: Sweden
 - 教授特权: 瑞典
 - **Switch to institutional ownership 转向机构所有权**
 - from a professor's privilege system (e.g. Germany, Austria, Finland, Denmark)
 - 原先: 教授特权制度 (比如, 德国、奥地利、芬兰、丹麦)
 - from a (partly) state ownership of IP from publicly funded research (e.g. Poland, Hungary)
 - 原先: 公费研究的知识产权 (部分) 归国家所有 (比如, 波兰、匈牙利)
 - **Switch to professor's privilege 转向教授特权**
 - Italy 意大利
- **World 全球**
 - China, South Africa, Japan, Brazil, Singapore, Mexico, Russia...
 - 中国、南非、日本、巴西、新加坡、墨西哥、俄罗斯...

How the institutional ownership affects knowledge transfer? 机构所有权如何影响知识转移?

Influence on patenting and commercialization

对专利获取和商业化的影响

Need to analyse university-owned patents and university-invented patents

需要分析高校拥有的专利和高校发明的专利

Need to assess patent quality (value)

需要评估专利质量（价值）

Comparison between university-owned patents and university invented patents

对比高校拥有的专利和高校发明的专利

- HEI ownership is negatively associated with the likelihood of selling the patent and creating an academic spin-off;
- 高校专利所有权与专利出售和学术创业的可能性呈负相关关系;
- university ownership positively affects the patent's licensing uses.
- 高校所有权正面影响专利的许可使用。

Study based on sample of 858 university European patents between 2003 and 2005 across 22 countries

研究基础：22个国家2003年至2005年间858份高校欧洲专利情况的样本

The impact of national legislative frameworks on the higher education sector's contribution to innovation

国家立法框架对高等教育的创新贡献产生的影响

- Unique survey 独特的调查
- Cross country analysis 跨国分析
- Countries with different IPR regulation stories 具有不同知识产权保护规范的国家
 - Sweden 'Professor's privilege' legislation since 1949 瑞典1949年通过“教授特权”立法
 - Spain Institutional IP ownership legislation since 1986 西班牙1986年通过机构知识产权所有权立法
 - Germany Institutional IP ownership legislation since in 2002 德国2002年通过机构知识产权所有权立法
 - Poland Institutional IP ownership legislation since 1993 with IP management reform started in 2005 波兰1993年通过机构知识产权所有权立法，2005年开始知识产权管理改革

Two university cases universities that share as many characteristics (size, type and disciplinary and subject coverage) as possible but exhibit differences in IP practices

两高校对比案例：寻找相似点（规模、类型、学科与课程范围）尽可能多，但在知识产权做法上存在差异的高校

- The data collected in two rounds in 2006/2007 and 2012/2013
- 两轮数据收集期：2006 / 2007年度、2012 / 2013年度

University patenting and technology commercialization – legal frameworks and the importance of local practice

高校专利获取与技术商业化 - 法律框架以及本地实践的重要性

Dagmara M. Weckowska, Jordi Mola-Gallart, Puay Tang, David Twigg, Elena Castro-Martínez, Izabela Kijenska-Dabrowska⁶, Dirk Libaers⁷, Koenraad Debackeres and Martin Meyer

Findings 发现

- University IP ownership is conducive, but not necessary
- 知识产权归高校所有，有助于知识产权管理，但非必要条件
 - „the cross-country comparisons suggest that the shift to Bayh-Dole-type legislation may stimulate the development of local practices for IP management and exploitation, which in turn stimulate academic patenting, but it is not always sufficient, and definitely it is not always necessary”
 - 跨国比较表明，采用拜杜法案式的立法可以刺激当地知识产权管理和利用实践的发展，从而促进学术专利的产生，但前者并非总是后者的充分条件，当然肯定并非总是必要条件。
 - The development of supportive local practices are possible before legislative changes and even without them
 - 在立法变革之前，甚至在立法变革从未发生的情况下，当地也可能发展出支持知识产权管理的实践。
- Isomorphism of IP management and exploitation practices
- 知识产权管理和利用实践的同构性
 - Collected data proved that at the range of local practices for IP management and exploitation was very similar across countries.
 - 研究收集的数据证明，不同国家知识产权管理与利用实践的范围非常相似
 - Legal advice, IPR counselling and management, market analysis, IP marketing, financing, company formation expertise and incubation services.
 - 法律建议、知识产权咨询和管理、市场分析、知识产权营销、融资、公司组建知识和创业孵化服务

„It’s an exciting time, but a confusing one, too.”
“这是令人激动的时代，也是令人困惑的时代。”

On which level IP management regulation should be introduced?
应在何种水平上引入知识产权管理规范？

- Statutory regulations (fundamental principles)
- 法定规范（基本原则）
- Internal level (the substance)
- 内部水平（实质）
- Customs / micro regulations /tools and processes/ daily routine / assistance from technology transfer office
- 海关 / 微观调控 / 工具与流程 / 日常程序 / 来自技术转移办公室的协助

National regulation – Polish example

国家规范 - 以波兰为例

- **Duty to regulate 规范责任范围**
 - **rights and obligations of universities, employees, students and doctoral students in context of the protection and use of copyright and industrial property rights,**
 - **在保护和使用知识产权和工业产权的背景下, 规范高校、员工、学生和博士生的权利和义务**
 - **rules for remuneration offered for creators** (including principles of revenue sharing)
 - **为创造者提供报酬的规则** (包括收入共享原则)
 - **rules and procedures of commercialization** 商业化的规则和程序
 - **rules for making use of university's property for commercialization purposes** and the performing (provision of) R&D services
 - **为商业化目的而利用高校资产的规则以及开展 (及提供) 研发服务的规则**
 - **terms of use of research infrastructure of the university** (what could be adopted in the separate regulation)
 - **高校使用研发基础设施的条款** (可另行单独规定)
- **Established on statutory level (public universities) 在法定层面建立 (公立院校)**
 - **rules and procedures for notification of the research results by employees, students and doctoral students**
 - **向员工、学生和博士生通报研究成果的规则和程序**
 - **rules and procedure of informing employee about the decision on commercialisation**
 - **向员工通报有关商业化决定的规则和程序**
 - **Commercialization paths** 商业化路径
 - **rules and procedure of benefit sharing** 收益共享规则和程序

Conclusion 结论

- Prevailing solutions 主流解决方案
- Adapted to specific conditions 适应具体条件
- Supported by flexibility 灵活性原则
- Soft law 软性法规
 - EU recommendation 欧盟建议
 - WIPO IP Policies (new 2019 edition!) 世界知识产权组织知识产权政策 (2019年新版!)
- Specific programmes stimulating IP management
- 促进知识产权管理的具体计划
 - CIPnet China Intellectual Property Management Project
 - CPI net 中国知识产权管理计划



China Intellectual Property
Management Network

China Intellectual Property Management Network 中国知识产权管理网络

The 4th EU-China IP Academic Forum 第四届欧盟-中国知识产权学术论坛

Alicante 阿利坎特

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Overall objective of CIPnet

CIPnet的总体目标

- To promote the modernisation and harmonisation of Intellectual Property Management practices in the higher education system in China, with a view to enhance university-industry collaborations and contribute to economic and social development.
- 推动知识产权管理实践在中国高等教育系统的现代化与协调化，加强产学合作，促进经济与社会发展

Indicators 指标:

- Increased innovation culture in CN HEIs
- 中国高校创新氛围的增强
- Improved TT&IP measures, practices and structures in Chinese HEIs.
- 中国高校技术转移和知识产权措施、实践与结构的改善

Specific objective 具体目标

- To establish a National Higher Education IP Network as a learning platform to foster the modernisation, harmonisation and strategic planning of Intellectual Property Management practices and regional integration in Higher Education of China
- 建立国家高等教育知识产权网络，将其作为平台，促进中国高等教育系统知识产权管理的现代化、协调化和战略规划、区域融合

CIPnet network
platform
CIPnet网络平台

IP management good
practices
知识产权管理良好做法

TT&IP policies
技术转移和知识产权
政策

Bottom-up approach
自下而上的方法

Networking focus
网络搭建焦点

Main activities 主要活动

01

Analysis of level of IP awareness and use of IP tools within HEI
分析高校内部知识产权意识和知识产权工具的使用情况

- A survey on IP & TT within Chinese HEIs
- 中国高校知识产权与技术转移调查

04

Capacity building 能力建设

- Face-to-face trainings events 面授培训
- Online trainings 在线培训
- Regional replication workshops 区域学习研讨会

02

Benchmarking of TT&IP good practices
对标技术转移和知识产权的良好做法

- TT&IP good practices that could be replicated by the members of the network.
- 网络成员可借鉴的技术转移和知识产权良好做法
- Good practices Guide for TT&IP management in HEIs
- 高校技术转移和知识产权管理良好做法指导

03

IP Management experts database
知识产权管理专家数据库

- Compilation of the TT&IP relevant experts
- 汇聚技术转移和知识产权相关专家

05

Networking 网络搭建

- CIPnet platform CIPnet平台
- CIPnet Contact Points CIPnet联络人
- Roundtables and cooperation with local stakeholders
- 与当地利益相关方开展圆桌讨论与合作
- Strategy for development and sustainability
- 发展与可持续性战略

REPORT ON THE LEVEL OF TECHNOLOGY TRANSFER AND INTELLECTUAL PROPERTY AWARENESS AND TRAINING NEEDS

关于技术转移和知识产权意识水平以及培训需求的报告

- First outcome of the project **项目首个成果**
- Questionnaire based survey **问卷调查**
 - Questions on: implemented (or not) IP Policies, incentives mechanism, commercialization indicators ; TTOs establishment and role
 - **问题角度：（是否）已实施知识产权政策、激励机制、商业化指标；技术转移办公室的设立及其作用**
 - researching the needs of Chinese universities
 - **研究中国高校的需求**
- 180 interviews conducted , 86 universities **86所高校，180次访谈**
- Main findings **主要发现**
 - overall demand for the different kind support **对不同类型的支持存在总体需求**
 - the need for the creation of the network **需要建立网络**



www.cipnet.eu

- activities, publications, objectives, partners
- 活动、出版物、目标、合作方
- News & Events 新闻与活动
 - trainings, roundtables, dissemination activities, conferences
 - 培训、圆桌讨论、传播活动、会议
- On-line learning platform 在线学习平台
- Resources, publications 资源、出版物
- Contact information 联系信息

**TECHNOLOGY TRANSFER FOR SUSTAINABLE DEVELOPMENT -
CONTRACTS AND THE TRIPLE HELIX**

面向可持续发展的技术转移 - 管理合同与三螺旋机制

Law School of Nankai University, 7-8 November 2019

南开大学法学院, 2019年11月7 ~ 8日



IP International Conference

“Knowledge Sharing & IP Management Strategies for China”

知识产权国际会议

“中国的知识共享与知识产权管理战略”

- The current and future challenges on TT&IP for CN HEIs
- 中国高校在技术转移和知识产权领域的当前和未来挑战
- Discussion and roundtables of CIPnet network members, stakeholders, IP&TT professionals, private sector representatives
- CIPnet网络成员、利益相关者、知识产权与技术转移专家、产业代表的讨论和圆桌会议
- Presentation of „Blueprint for innovation & IP strategies for China”
- “中国的创新和知识产权战略蓝图” 报告
- Shanghai, September 2020.
- 2020年9月，中国上海





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