



Intellectual Property: Policy of the Bern University of Applied Sciences

1 Preamble

Together with partners from business, society and culture, the Bern University of Applied Sciences (BFH) aims with its research and development activities and its teaching to achieve technologically, medically, artistically, economically, or socially valuable research and development results that are translated into marketable or socially relevant innovations. These are made accessible to the economy, society and culture through implementation-oriented knowledge and technology transfer in research and teaching.

As an institution under public law, the BFH pursues an Open Science strategy. All intellectual property (IP) created at the BFH¹ shall primarily serve the general public. Therefore, it must be proven in each case what advantages are gained by the partners involved if these intellectual property rights (IPR) are protected and can only be used and exploited by the parties or made unavailable to the general public. The intellectual property policy present, with its corresponding openness but also justified confidentiality, forms the foundation for this.

2 Rights of use regarding intellectual property

Intellectual property created by BFH employees² in the course of their employment shall belong to the BFH.³ The BFH takes divergent interests into account in accordance with Section 2.6. The transfer of intellectual property from teaching, research and development activities as well as the use thereof shall take place in accordance with the following provisions:

2.1 Research and development contracts (R&D contracts) and services

Intellectual property created at BFH as part of an R&D contract⁴ financed by a third party⁵ may be transferred to the third party. The handling of unpublished and unprotected results shall be contractually regulated.

Intellectual property rights to results and measurement data arising within the scope of services shall go to the third party. All rights and entitlements to methods, computer programmes or tools used or developed within the framework of the service shall remain with the BFH.

BFH reserves the right to freely use intellectual property created in the course of R+D assignments for commercial and non-commercial purposes in research and teaching⁶. Agreements on publications and confidentiality remain reserved.⁷

¹ Intellectual property within the meaning of this policy refers to protected intellectual property as well as other legally - as a rule contractually - protectable intellectual property. Intellectual property rights protected by special law include copyright (for the protection of linguistic works, works of music and art, works with scientific or technical content as well as visual works and computer programmes) and industrial property rights (patent, trademark, design, plant variety protection and topography rights). As a rule, business methods, concepts, results or expertise cannot be protected by special law, but only by contract.

² As employees of the BFH within the meaning of Art. 10 Para. 2 of the Bern University of Applied Sciences Act of 19 June 2003 (University of Applied Sciences Act, FaG; BSG 435.411) shall apply, inter alia: Lecturers, assistants, academic staff, other staff. BFH employees also include employees whose salaries are financed by third-party funds.

³ Cf. Article 54a FaG.

⁴ For contracts financed by third-party funds, the service rates shall apply in accordance with the BFH guidelines. They shall cover all direct costs as well as an appropriate share of indirect costs.

⁵ Third parties are natural persons or legal entities under private and public law in Switzerland and abroad, with the exception of the BFH and its employees. Excluded from the scope of application are publicly funded R&D projects, for which Sections 2.2 and 2.3 take precedence.

⁶ Teaching in the sense of education and training.

⁷ General Terms and Conditions (GTC) of Bern University of Applied Sciences, dated 8 June 2021.

2.2 Publicly funded R&D projects with third-party funding

Intellectual property arising from projects in which BFH's expenses are partly covered by third parties and partly by the public or corresponding funding⁸, or by BFH's own funds, may be transferred to the third party/parties. In the event of a transfer, this third party may in principle use the intellectual property in its business field. BFH shall receive an exclusive, possibly registered licence for use and sub-licensing outside the third party's business field. The business field must be clearly defined when the contract is concluded.

The rights to use copyrights may be contractually transferred to the third party. Related property rights and the handling of unpublished and unprotected results shall be contractually regulated.

If revenue is generated from the use of the intellectual property, the third party and BFH shall mutually share this revenue. The ratio of contributions made by the third party and BFH in producing the results shall be decisive. The financing of the property right costs shall be contractually regulated.

2.3 Publicly funded R&D projects

Intellectual property created in the course of projects financed with BFH's own funds or other public or corresponding funding⁸ shall be made available to the general public. In order to safeguard mutual interests, deviating agreements may be made with other universities, research institutes, funding institutions, and similar. In the case of R+D projects the BFH can apply for, license, sell or transfer intellectual property.

2.4 Intellectual property arising from teaching activities

Intellectual property created in the course of teaching activities by employees or with BFH funds belong to BFH⁹, subject to section 2.6. In cases justified in writing, the intellectual property may be licensed or sold or transferred.

2.5 Intellectual property from student work

Intellectual property from a student's work (*e.g.*, semester project, bachelor's or master's thesis) belongs to the student. Students may contractually transfer the intellectual property to third parties or to BFH.

2.6 Intellectual property from works¹⁰ by employees

The BFH meets the interests of its employees in connection with intellectual property which typically arise in the course of university and research operations and to which the BFH is legally entitled. As a rule, BFH transfers the rights to artistic, literary, and creative works created by BFH employees to the employees themselves. Moreover, the employee shall be entitled to intellectual property rights that arise in the course of his or her professional activities but outside the fulfilment of his or her obligations under service law. Further contractual agreements, in particular to meet the interests of persons working in a contractual relationship¹¹, remain reserved.

⁸ E.g. foundations organised under private law that award funding according to public law principles, such as Innosuisse and the Swiss National Science Foundation (SNSF).

⁹ The OER (Open Educational Resources) Policy of the Bern University of Applied Sciences shall apply.

¹⁰ This includes in particular Works understood according to copyright law.

¹¹ In the formulation of Art. 4 para. 4 of the Ordinance on the Bern University of Applied Sciences of 16 November 2022 (University of Applied Sciences Ordinance, FaV; BSG 436.811).



3 Exploitation of intellectual property

3.1 Licensing or sale

BFH's intellectual property rights can be used by interested third parties either through licensing or the purchase thereof. If there is no reason on the part of BFH to withhold the IPR, a sale is usually preferred. In the case of patent applications, the aim is to exploit the intellectual property rights within 30 months (after the priority date).

3.2 Participation of the inventors or authors

If the BFH generates income from the licensing or transfer of intellectual property rights, the inventors or authors involved at the BFH share in the gross income after deduction of the expenses incurred in the exploitation.¹²

3.3 Start-up and Spin-off promotion

Members of BFH¹³ are granted a preferential right¹⁴ to a licence or the purchase of BFH's own intellectual property rights, which they themselves have (co-)developed. Within its possibilities, the BFH creates favourable conditions for the establishment of spin-off or start-up companies based on such results.

4 Communication

The BFH claims mention if it was involved in the creation of an intellectual property right. The BFH can report on activities and results related to the creation of intellectual property in mutual consultation with all parties involved.

This policy shall come into force on 1 January 2023 and replaces the intellectual property policy of Bern University of Applied Sciences of 1 January 2009.

Bern, 16/11/2022
Bern University of Applied Sciences
School Board

Markus Ruprecht, President

¹² Cf. Section 8.4 of the Directive on Knowledge and Technology Transfer at Bern University of Applied Sciences dated 16 November 2022.

¹³ The members of the BFH are the students and staff (Art. 10 para. 1 FaG).

¹⁴ Priority means that the BFH employees concerned are given preference over any external interested parties.