

Also in light of the amendments of the Italian Code of Industrial Property (Legislative Decree 10 February 2005, No. 30), of the legislative amendment introduced within the European Community and of its own internal strategies, the Foundation has started a review process of its own policy on intellectual property protection. For the time being, such review process has brought to the drafting of a new version of the policy, here below enclosed (version II).

This version II of the policy is published on the website of the Foundation on date 2 February 2011 ("Publication Date") and it is in force and binding in relation to all the grants, calls for proposals and different initiatives of granting of the Foundation following the Publication Date.

This version II of the policy is applicable also to the calls for proposals of the Foundation presented starting from the date of January 25<sup>th</sup>, 2011 and therefore it is fully binding for the grantees of such grants.

The review process of the policy by the Foundation is still in course. The Foundation reserves therefore the right to modify at any time its own policy, including the range of its effectiveness, and to give the relevant communication through the home page of its official website [www.fondazione cariplo.it](http://www.fondazione cariplo.it).

The Italian version of this policy constitutes the only applicable version. The English version is just a courtesy translation that is not effective in any way. In the event of conflict between the Italian and the English version of the policy, the Italian one shall prevail.

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#### POLICY OF CARIPLO FOUNDATION ON INTELLECTUAL PROPERTY PROTECTION

(version II, in force and binding in relation to all the grants, calls for proposals and different initiatives of granting following the Publication Date and to the calls for proposals presented starting from the date of January 25<sup>th</sup>, 2011)

1. Innovation means any outcome of the research activities relating to the grant awarded. Innovation includes:
  - a) inventions, utility models, topographies of semiconductor products and plant varieties, patentable or not patentable;
  - b) designs or industrial models, registrable or not registrable or unregistered;
  - c) the works of the mind - included the related rights - including software and database.
2. In the event that the grantee finds an innovation, the same grantee undertakes to:
  - a) promptly inform the Foundation about the contents of that innovation and the possible implications of industrial development;
  - b) submit a confidential report to the Foundation on the possible forms of protection of innovation according to the means of protection described in paragraph 1 above, presenting his own reasoned choice about the activities to be undertaken; the Foundation will have the faculty to post comments in this report within 30 days of receipt thereof. Once such term is expired, the grantee will be free to proceed according to the forms of protection indicated in the report;
  - c) recognize to the Foundation a right of co-ownership of the innovation, unless a different will of the Foundation; such right does not imply property claims by the Foundation, but only a

right of co-header of any title (including those listed under 1 a), b) and c), as applicable, and limited powers of intervention as described in the following paragraphs.

3. In the event that the grantee proposes to not proceed with any form of protection for any reason whatsoever, the Foundation shall require grantee to give public access to innovation, however, by jointly agreeing, and subject to terms of the dissemination justified reasons from time to time submitted by the attention of the Foundation.

4. In the event that innovation is protected on the basis of forms of protection described under 1 a), b) and c), as applicable, all the main phases of the application, granting, renewal, renounce, territorial extension, and more in general of the management and maintenance of patent/registration, and any and all possible dispositive acts (assignment contract, licensing, etc.) for the economic exploitation of innovations, must be constantly communicated in advance to the Foundation. All costs and expenses are the sole responsibility of the grantee.

5. The grantee undertakes to act, during the different stages of exploitation of the innovation as described above, in compliance with the "ethical" management policy. Subject to further and following indications by the Foundation, "ethical" management of the innovation means:

a) the obligation to exploit the innovation, even by third parties involved in the dispositive acts above mentioned in paragraph 4 above, in accordance with the purposes and means which are not inconsistent with the principles for the protection of Human Rights (see Convention for the Protection of Human Rights and Fundamental Freedoms);

b) the obligation to re-investment of at least 50% of the proceeds generated by the first real act of exploitation of innovations for the purposes of research and development by the grantee, with a commitment of prompt information to the Foundation.

6. In case of non-compliance with paragraph 5, the Foundation will take all necessary remedies to protect its own rights.

7. The Foundation does not - directly or indirectly - accept any liability a) on the validity of the rights relating to the innovation which is co-owner or b) on the exploitation of the innovation itself by the grantee or its successors cause. The grantee will therefore be the sole responsible party for the cases described under a) and b) and in any event the Foundation will be held harmless and indemnify from and against any resulting liabilities, damages, costs or expenses, including legal fees.

8. It is, in any case, not precluded the recognition of moral rights of individuals classified as actual authors of innovation.

9. For the purposes of an ordered implementation of the commitments contained in the preceding paragraphs, the grantee and the Foundation undertake to identify moments of confrontation on the expectations and objectives of the promotion of innovation for a more precise definition and implementation of the principles expressed in the this policy.

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Version I of the policy, in force and binding in relation to the calls for proposals published prior to the date of January 25<sup>th</sup>, 2011.

POLICY OF CARIPLO FOUNDATION ON INTELLECTUAL PROPERTY PROTECTION

(version I, in force and binding in relation to the calls for proposals published prior to the date of January 25<sup>th</sup>, 2011)

1. "Innovation" means any research result stemming from a project funded by the Foundation that is capable of being used in some kind of industry as a new solution to technical/practical problems and whose innovative content is not obvious to someone with knowledge and experience in the field where the project is conducted.

2. If the grantee makes an innovation, the grantee shall:

a) grant the Foundation joint rights in the innovation; said joint rights shall not entail any property rights but only the right to have any innovation patent registered to both the Foundation and the grantee as well as the additional prerogatives set out below;

b) promptly inform the Foundation of the content of the innovation and of its industrial development potential;

c) submit a confidential report to the Foundation about possible forms of exclusive rights protection (by patent, registration or secret) including the grantee's favored option and the reasons for making that choice. The Foundation has the right to submit its remarks on the report within 30 days of receipt thereof. If the Foundation does not submit its remarks within said term, the grantee shall have the right to proceed to carry out the actions set out in the report.

3. If the grantee indicates it does not intend to proceed to any forms of patenting and/or registration for any reasons whatsoever (including the reason that the scientific knowledge gained does not qualify as 'innovation'), the Foundation has the right to demand that the research and its results be placed in the public domain and propose to the grantee how to do so. The grantee is entitled to submit its remarks on the proposal within 30 days of receipt thereof. If the grantee does not submit its remarks within said term, the Foundation shall have the right to proceed to carry out the actions set out in its proposal.

4. If the innovation is patented /registered the grantee shall have the patent jointly registered to the Foundation, unless the Foundation wishes otherwise. The Foundation shall have no property management rights except for the prerogatives set out below. The Foundation shall be promptly informed of any patenting/registration steps (no later than 60 days prior to the expiration of the term) and participate in decision-making by informing the grantee (no later than 30 days prior to the expiration of the term) of its opinion in relation to the decisions to be made.

5. Specifically, the grantee shall indicate the countries where the grantee intends to file for patent protection in Europe and/or under PCT within 3 months of the deadline for final designation. If the grantee decides not to file an application for protection of intellectual property rights, the grantee shall justify its decision to the Foundation, and the Foundation be entitled (under joint registration) to patent/register the invention in those countries through intermediaries it trusts.

6. Similarly, upon patent/registration renewal the grantee shall confirm its willingness to continue to pay the annual renewal fee within 3 months of the due date for payment of said renewal fee. If the grantee decides not to renew the patent/registration, the Foundation shall be entitled (under joint registration) to renew the patent/registration in those countries through intermediaries it trusts.

7. In the cases under 5 and 6 above, the grantee shall have no right on any returns earned on the exploitation of the patent/registration by the Foundation.

8. In all steps of the exploitation of exclusivity rights the grantee shall exercise said rights 'ethically'. Subject to further indications by the Foundation, 'ethical' exercise of the rights under the patent shall include but not be limited to the following:

- a) exercise of exclusive property rights as a function of the need met by and accessibility to the exploitation of the protected innovation;
- b) actual commitment to generating effective innovation exploitation opportunities commensurate with the actual or potential need for the innovation;
- c) exploitation of exclusive rights which does not harm human or environmental safety nor the dignity of any human being or animal;
- d) plowing back at least 50% of profits made on the exploitation of said rights into other, successive research and development initiatives.

9. The grantee shall put down in writing the commitment under 8 above and said written commitment shall be duly recorded in the patent file to ensure it can be validly used with any successor-in-interest and be transferable together with title/right to exploit the patent.

10. In case of Sale or Licensing, the grantee shall give prior notice thereof to the Foundation to make sure said actions do not infringe the commitment under 8 above; and especially to bind any third party acquirer or licensee to termination in the event the acquirer or licensee infringe the commitment under 8 above.

11. In case of infringement of the commitment under 8 above, the Foundation reserves the right to acquire full rights to use the patent/registration, giving notice of its intention to the grantee (that from that moment shall no longer be entitled to take any action nor use the patent/registration) as well as to any third parties, and assign management thereof to intermediaries it trusts. In that event the grantee shall have no rights on any returns arising from the exploitation of the patent/registration by the Foundation.

12. The moral rights of the individuals who are the actual inventors of the innovation shall not be affected.

13. For the orderly fulfillment of the commitments above, the grantee and the Foundation undertake to establish occasions for discussion of expectations and goals in relation to the exploitation of the patent for a more detailed definition of the principles set forth under 8 above in relation to the specific patented applications to make their commercial use by third parties viable.