

# GLOBAL ACCESS AND INTELLECTUAL PROPERTY POLICY

<b>Policy Owner:</b>	Deputy General Counsel
<b>Date of Approval by Board:</b>	11 December 2018
<b>Review Schedule:</b>	Every three years by the Board
<b>Date of Most Recent Review:</b>	June 2021
<b>Date of Next Review</b>	June 2024

## 1. Introduction to Global Access at GIF

GIF is dedicated to transforming ideas into impact. Through our grants and risk capital, we invest in social innovations that aim to solve global development challenges and dramatically improve the lives of millions of the World's Poor. These innovations can include, but are not limited to, new technologies, business models, policy practices and insights from behavioural economics.

GIF is committed to the principle of “global access”<sup>1</sup> to ensure that GIF-funded innovations will have the greatest possible impact for the people that GIF serves. Where we are funding the development of information or a product-based innovation, we require a commitment by the innovator that the innovation or information will be made available to the World's Poor at affordable prices, on a reasonable time frame and of suitable quality. Where GIF funds the development of any intellectual property, the management of IP is critical to achieving global access.

One size does not fit all when it comes to global access and management of IP so GIF encourages innovators to devise their own strategy for achieving global access. The intention of this policy is to provide GIF innovators (also referred to as Investees in this policy) with GIF's guiding principles and practical tools for the development of that strategy.

## 2. Scope of Policy

GIF requires Investees to comply with this policy where it is relevant to the Project funded by GIF.

Where GIF funds research, and especially formal impact evaluation, this policy should be read in conjunction with GIF's *Guidelines for Research Transparency in GIF-Sponsored Impact Evaluation*.

## 3. Definitions

**3.1** In this policy, in our legal documents and when we work with Investees to achieve global access, the following terms have the meanings given to them here (unless we agree it is appropriate in the circumstances of the Project to vary them in the legal documents):

**3.2 Background IP** means any IP:

- (a) created, devised or generated by the Investee or a third party prior to the commencement of the Project that is necessary or useful for the performance of the Project and protection or use of the Project IP;
- (b) created by the Investee after the date of [the funding agreement between GIF and the Investee] (independently of the course of performing that agreement) that is necessary or useful for the performance of the Project and protection or use of the Project IP; and
- (c) that is a modification, amendment, alteration, enhancement or improvement by the Investee of the IP in (a) above after the date of [the funding agreement between GIF and the Investee] (whether in the course of performing that agreement or otherwise)<sup>2</sup>, but that is not Project IP, and that is necessary or useful for the performance of the Project and protection or use of the Project IP.

**3.3 Data Protection Legislation** means all data protection and/or privacy legislation that applies in the jurisdiction(s) in which the Project is to be implemented and/or to each of the [parties, being GIF and the Investee], including any subordinate legislation, regulation or guidance issued by the relevant authority responsible for data protection and/or privacy in such a jurisdiction. Data Protection Legislation includes the

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<sup>1</sup> Our global access principles are derived from earlier work done by the Bill and Melinda Gates Foundation, Grand Challenges Canada and other creative thinkers, for whose thought leadership we are grateful.

<sup>2</sup> GIF may agree with the Investee that if the modification, amendment, alteration, enhancement or improvement resulted from GIF's funding, then this IP is Project IP.

following legislation (to the extent still in force): the Data Protection Act 2018, the General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all legislation derived from the Data Protection Bill 2017.

**3.4 IP or Intellectual Property** means:

- (a) any patents, designs, domain names, trademarks and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how, inventions (whether patentable or otherwise) and confidential information; and
- (b) all other intellectual property rights and similar or equivalent rights anywhere in the world that currently exist or are recognisable in the future; and
- (c) applications, extensions and renewals in relation to any such rights in (a) and (b).

**3.5 Personal Data** has the meaning given to this term in the General Data Protection Regulation.

**3.6 Project** (in this policy only) means the programme, innovation, research or other project carried out by an Investee with GIF funding. (This term will be given a unique definition in each agreement between GIF and an Investee.)

**3.7 Project IP** means Intellectual Property created or developed by the Investee as a result of funding from GIF, but not including Background IP.

**3.8 Target Beneficiaries** means the World's Poor.

**3.9 World's Poor** has the meaning given to it in GIF's Articles of Association as amended from time to time. As at the date this policy was approved, that term means those persons living on less than US\$5 per day and particularly those living on less than US\$2 per day (as such thresholds shall be adjusted, in each case, either: (i) simultaneous to, and pro rata to, any adjustments from time to time in the World Bank's US\$2 per day (as at the date of adoption of the Articles) measure of individual poverty to reflect inflation or (ii) as the GIF Board may otherwise consider appropriate in line with other widely recognised international measures of individual poverty in developing countries.

## 4. GIF's Global Access Principles

**4.1** We take a principled but flexible approach to global access. The principles that guide us are:

- **Global access is key to our mission and impact:**

The Project (and, if necessary, any Project IP and Background IP) must benefit or be made accessible to GIF's Target Beneficiaries.

When we assess benefit, we take both direct and indirect benefit to our Target Beneficiaries into account. When we assess accessibility, we think about factors such as whether the Project (or its output) will be made affordable and widely available to our Target Beneficiaries in sufficient volume and within an appropriate time frame.

- **Research should be disseminated widely:**

When GIF funds research, IP is generated (for example, copyrightable written reports). In this case, (subject to compliance with Data Protection Legislation and any legally binding confidentiality restrictions or third party IP rights) information and results generated by the research (and any underlying data sets) must be made publicly available and must be widely disseminated amongst the relevant research

community as promptly as possible following completion of the research. In these circumstances, the Investee should also refer to GIF's *Guidelines for Research Transparency in GIF-sponsored Impact Evaluation* for more detail.

- **Use open access licences when possible:**

When appropriate, Project IP, to the extent it is covered by copyright, should be subject to a licence that allows free access to all. This licence may be the Creative Commons Attribution 4.0 Generic Licence or a similar open access licence offering access without payment but with attribution to the IP owner(s) (**Free Access Licence**).

- **Ownership rights over IP:**

We encourage Investees to take ownership over Project IP and Background IP where reasonably practical and to be responsible for taking all steps necessary to maintain and protect it. If it is not reasonably practical for Investees to take ownership over Project IP and Background IP, Investees should obtain sufficiently wide licences and permissions from the IP owners to make such IP available.

If required under the circumstances, GIF may request Investees to grant GIF a non-exclusive, royalty-free, sub-licensable, perpetual and irrevocable licence to use and disseminate the Project IP and Background IP.

If an Investee cannot comply with global access obligations (including for reasons of insolvency or change of control), GIF may take appropriate action such as requesting an exclusive licence to the IP funded by GIF's investment.

- **Private benefit:**

GIF supports entrepreneurs who find sustainable ways to help the World's Poor and believes that global access is achievable even within the context of a profitable innovation model. GIF promotes a responsible balance between private benefit and global access.

## 5. Global Access Strategy

5.1 GIF expects all Investees to be committed to global access when carrying out the Project. However, for some Projects, it may be appropriate to consider how global access will be achieved in more detail. In these cases, GIF will request that the Investee create a **Global Access Strategy**.

5.2 A Global Access Strategy would include the following components:

- a general commitment to making the products, services or information (and any relevant Project IP and Background IP) that result from GIF's funding beneficial or accessible to GIF's Target Beneficiaries;
- identification of the nature of the Project IP, including who will own such IP (which, in the case of Project IP, should be the Investee, unless this is not reasonably practical) and be responsible for registering or otherwise maintaining and protecting it;
- identification of the nature of any Background IP, including who owns it and whether the Investee has obtained or will be required to obtain a licence to such IP (and whether any restrictions on use of the Background IP will materially restrict use of the Project IP in accordance with this policy);
- where appropriate and where the Investee owns Project IP/Background IP, a requirement that the Investee will assign ownership of, or grant an appropriate licence to, the Project IP (and, in some circumstances, the Background IP) to GIF, for GIF to make it publicly available, if GIF considers that the

Investee has failed to fulfil its global access or other contractual obligations in relation to the Project and/or where the Investee becomes, or threatens to become insolvent or is subject to a change in control<sup>3</sup>;

- warranties from the Investee to GIF regarding the Project IP and Background IP and particular aspects of the IP Access Strategy, covering rights to use and rights to distribute the IP and assurances that this use and distribution will not breach the rights of third parties (unless these warranties are contained in the legal agreements between GIF and the Investee);
- the list of Background IP and Project IP mentioned in paragraph 4.1 of this policy.

**5.3** In developing the Global Access Strategy and adopting the components above, Investees should consider how the following circumstances can improve their Global Access Strategy:

- the Investee's corporate structure;
- the structure/type of GIF's funding;
- the scope, duration, stage and complexity of the Project;
- the demographics of the areas where the Project will be implemented;
- whether GIF funds will be used directly or primarily to fund the development of IP or whether the development of IP is a secondary or ancillary aspect of the Project
- the nature of any Project IP and Background IP that is to be subject to the Global Access Strategy (for example, achieving global access in respect of trademarks or patents can require more thought than achieving global access of copyright);
- whether there is any Background IP required for the Project and who owns that Background IP;
- whether it is reasonably practical for the Investee to own the Project IP and Background IP;
- where the Background IP or Project IP includes third party IP that it is not reasonably practical for the Investee to own, whether the Investee has sufficient licences (permissions) to ensure global access in relation to the Project;
- any intended future use of the IP;
- whether it is intended or likely that someone will derive some private benefit from the Project or any Project IP;
- whether it is intended that the Project IP or Background IP will be commercialised; and
- whether there are other investors or donors providing funding to the Investee and whether their goals and needs are aligned with GIF's mission and global access priorities.

## **6. Compliance and Review**

**6.1** This policy is reviewed and approved every three years by the Board. The Deputy General Counsel is responsible for updating it if necessary prior to the Board reviewing it. This policy is compulsory under clause 23.1 and Part B of GIF's Byelaws, meaning the Board is required to adopt and maintain it.

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<sup>3</sup> These licences/assignments will be treated on a case-by-case basis by GIF.

- 6.2** Each Investee will only be required to comply with the version of this policy in effect at the time GIF and that Investee agree on a Global Access Strategy (unless otherwise agreed by GIF in writing) for the relevant Project. Compliance is monitored periodically by the Legal & ESG Team.
- 6.3** The current version of this policy at any given time will be available on GIF's website.