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# Intellectual property policy to promote innovation in Japan

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# Principal agents of innovation

Governments  
Industry  
Academia  
Citizens

- Research funds: governments and industry
  - Construction of the social systems and regulations surrounding R&D: governments
  - R&D activities: industry and academia
  - Putting demands in new products and watching new technology from the viewpoints of safety and ethics: citizens
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# Science and Technology Policy in Japan

- 1995: Science and Technology Basic Law
  - 1996-2001: the first Science and Technology Basic Plan
  - 2001-2006: the second Science and Technology Basic Plan
  - 2006-2011: the third Science and Technology Basic Plan
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## Focus: IP in academia

- One of the policy goals of the Japanese government is, establishing a “nation on the basis of intellectual property,” which means to create a prosperous country by attaching importance to IP and improving social systems.
  - That is, the strategic promotion for the creation, protection and exploitation of IP is going on.
  - Universities are expected to function as a major source of IP and technology transfer to industries.
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# Environment over industry-university

## cooperation in Japan

- 1998- Law on Technology Licensing Promotion for Universities  
Subsidy or debt underwriting for authorized TLO
- 1999-Special Measures Law on Industrial Energy Regeneration  
Articles 32 and 33, discount of patent fee and charge for authorized TLO
- 2000-Removal of ban on national university teacher serving as TLO officer
- 2000-Law on Reinforcement of Industrial Technical Capacity  
Discount of patent fee and charge for university teacher or university  
Deregulation on national university teacher serving as private company officer  
Free use of national property by TLO
- 2000-Promotion of organizational management and exploitation of patents in national universities (notification)  
National patent is now assignable to authorized TLO.
- There are 47 authorized TLO (as of May 2009).

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## Past situation before April 2004

- Japanese National Universities retain no independent legal status and thus no ownership of IPRs.
  - Patents or the rights to receive patent are owned by researchers (professors) or government.
  - The ownership is determined by the Invention Committee of each university.
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## Past situation before April 2004

- Professors are under obligation to do research and education but usually not under direction of university concerning decision of research subjects.
  - (Position 1) An university (in the case of national university, government) must own the invention that is made during working hours utilizing it's faculty and expense.
  - (Position 2) As subject of research is put in their hands, professors must own the invention made in university.
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## The Official Notification (No. 117) of the Ministry of Education, Science, Sports and Culture (Monbusho), 1978

- The rights to invention belong to professors who made it,
  - unless the invention was made “under the special funding from the Government for a project specified as being for the purpose of developing practical applications”,
  - or made “as a result of a project specified as being for the purpose of developing practical applications, and which utilizes special research facilities that are established by governmental fund”.
  - An example of the special research facilities mentioned here is particle accelerators.
  - This Notification also advised each National University to establish an Invention Committee to be reported all the inventions made by its professors and judge whether the rights to an invention belong to inventors or the nation.
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# The National University Corporation Bill

- After April 2004  
Japanese national universities were turned into independent corporations.
  - National universities become independent legal body and inventions can be owned and managed by universities.
  - Each national university corporation can independently hold and manage intellectual property rights, and universities started operations by setting up “intellectual property headquarters.”
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# The Three Major Events in June 2003

- July 8, 2003  
The government's Intellectual Property Policy Headquarters announced the Strategic Program for the Creation, Protection and Exploitation of Intellectual Property.
  - July 9, 2003  
The National University Corporation Bill was approved at an Upper House plenary session. →enacted from April 2004.
  - July 15, 2003  
The Ministry of Education, Culture, Sports, Science and Technology (MEXT) announced 43 institutions that were qualified for the “university intellectual property headquarters development program.”
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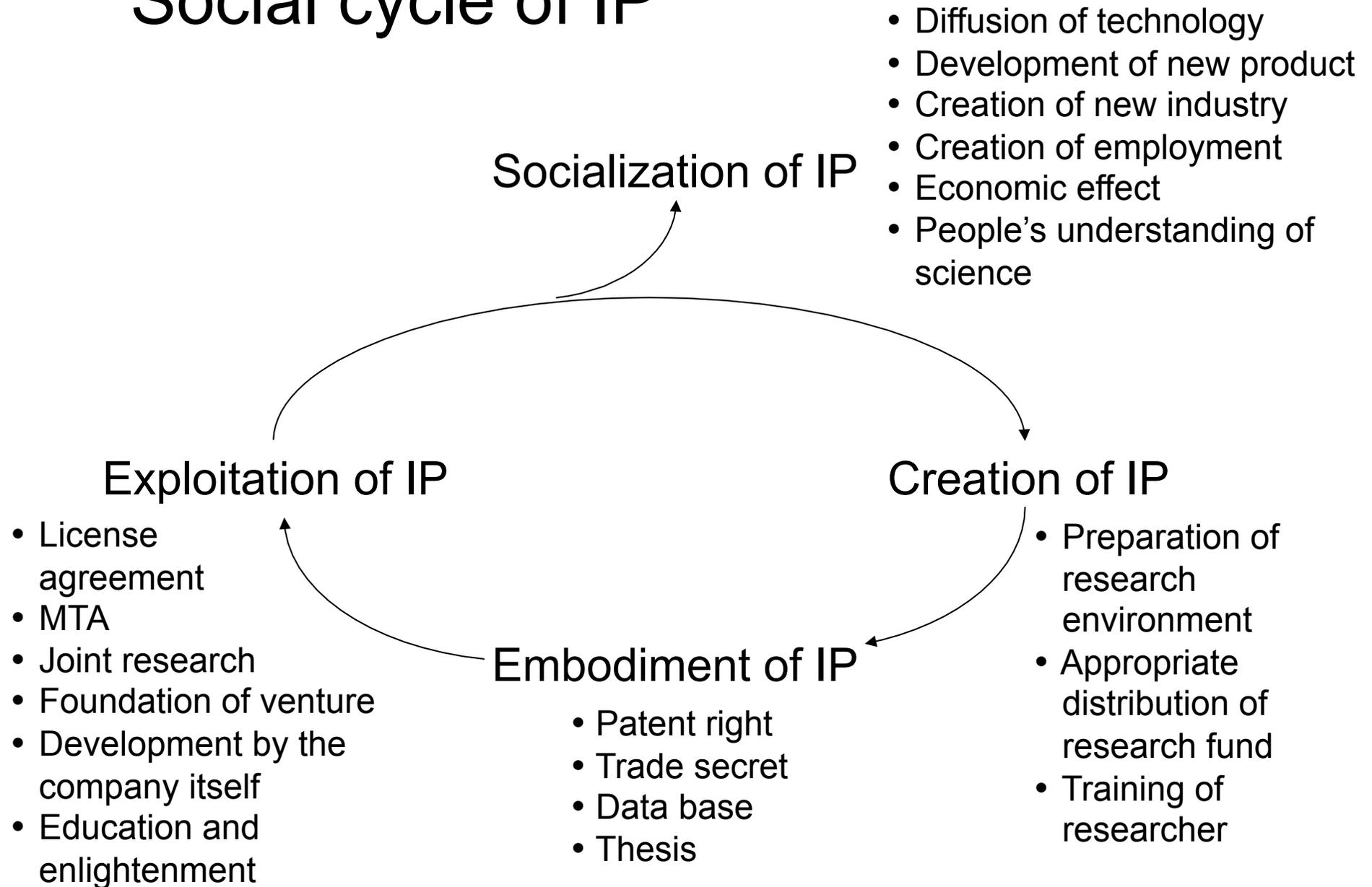
## Intellectual Property Strategic Program (2003- published annually)

- 1. Creation
- 2. Protection
- 3. Exploitation
- 4. The Dramatic Expansion of Content Business
- 5. Developing Human Resources and Improving Public Awareness

[http://www.kantei.go.jp/jp/singi/titeki2/keikaku2009\\_e.pdf](http://www.kantei.go.jp/jp/singi/titeki2/keikaku2009_e.pdf)

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# Social cycle of IP



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## Future Tasks

- (1) Will research areas that cannot be used for industrial applications go out of vogue?
  - (2) Will announcement of results of academic researches be restricted?
  - (3) Will secretive methods spread?
  - (4) Is it possible to manage “conflict of interests” successfully?
  - (5) Is it possible to avoid the “tragedy of anti-commons”?
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## Issue of Japanese Patent System 1: Patentability of medical practice

- “Methods for treatment of the human body by surgery or therapy and diagnostic methods practiced on the human body” do not fall under the definition “industrially applicable inventions.”
  - Behind this categorization, there is an assumption that medicine should be sacred activities performed outside of the economic rationality framework.
  - Under existing circumstances, however, many medical activities are generated as a result of R&D activities by private industries. Consequently, “medicine” and “industry” become more inextricably linked.
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## Issue of Japanese Patent System 1: Patentability of medical practice – Cont.

- Accordingly, among the techniques included in the “methods for treatment of the human body by surgery or therapy and diagnostic methods practiced on the human body,” there are now many methods for which R&D should be promoted by making them patentable.
  - Therefore, we should review the current classification so that “methods for treatment of the human body by surgery or therapy and diagnostic methods practiced on the human body” can be included in “industrially applicable inventions.”
  - Based on the new definition, a system that can ensure smooth operation of medical activities should be established.
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# Issue of Japanese Patent System 2:

## Research tool patents

Article 69 (1), Japanese Patent Law

The effects of the patent right shall not extend to the working of the patent right for the purposes of experiment or research.

- According to the study by Keiko Someno, there are three categories of “experiment or research”
    - (1) examination to confirm patentability,
    - (2) examination to confirm functions
    - (3) experiment aimed at improvement.
  - It has been understood that use of research tools does not fall under any of the categories. That is, in deciding if the use of a certain patented research tool in research activities constitutes the infringement of the patent, **academic institutions such as universities are no exception.**
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“Guidelines for Research Licenses for Intellectual Property Rights Stemming from Government-Funded Research and Development at Universities, etc.”

- They were issued by Japan’s Council for Science and Technology Policy (CSTP) on May 23, 2006.
  - The guidelines endorsed the principle that when patent rights obtained through government-funded university R&D are used for nonprofit purposes, nonexclusive licenses should be granted.
  - As for licensing fee, the guidelines recommended that such licenses be “royalty free in principle” or that “a reasonable royalty” be levied.
  - This guideline is only applicable to licensing from universities to universities.
  - The area of technology was not specified in this guideline.
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## “Guidelines for Facilitating the Use of Research Tool Patents in Life Sciences.”

- They were issued by CSTP on March 1, 2007.
  - It would not limit licensors and licensees to universities and could include R&D not funded by government.
  - They recommended that when a third party seeks permission from research tool patent holders to use these patents in the research stage, except in cases where this would compromise business strategy, consideration should be given to facilitating their use, such as by granting nonexclusive licenses, and that a reasonable licensing fee should be set.
  - These guidelines went a step further than the previous ones in stating that it was desirable that licenses be granted to universities for free (except for the costs accompanying provision of tangibles).
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