

# Cynghrair Strategol Strategic Alliance



## **Aberystwyth University & Bangor University Common Intellectual Property Policy (v25)**

Aberystwyth and Bangor Universities are both committed to ensuring that the results of its teaching and research are used for the benefit of the society and economy of Wales and beyond. This document ("Policy") sets out both Universities' policy position with regard to the creation, ownership and exploitation of intellectual property.

### **Partnership**

Aberystwyth and Bangor Universities have acted in concert in the development of this Policy and the Universities have agreed to adopt a common Intellectual Property policy to promote greater synergy between the academic and support communities of the two institutions. This Policy operates as a policy for both Aberystwyth and Bangor Universities whether they are acting together or separately and applies to each institution as a separately constituted organisation.

### **1. Principles of the Policy**

The exploitation of Intellectual Property enhances dissemination of research results, provides a method for social improvement and can generate income for the University and its employees. It is only equitable that Staff and Students who have contributed to the creation and exploitation of Intellectual Property are treated fairly in terms of the sharing the beneficial income resulting from the exploitation of Intellectual Property.

The main principles of this Intellectual Property Policy are as follows:

- The University wishes to create an environment that encourages and promotes the creation and dissemination of inventions, new research and theories
- The public recognition of the work of academics and researchers (whether Staff and/or Students)
- To protect valuable Intellectual Property and to create a competitive advantage in the exploitation of results
- To promote the successful exploitation of Intellectual Property
- To encourage knowledge transfer thereby increasing regional and national economic growth
- To facilitate the development of Intellectual Property by providing fair and equitable financial rewards to Staff, Students, Institutes and the University.

This Policy sets out the position of the University for the creation, ownership, protection and exploitation of Intellectual Property within the University. This Policy aims to balance the interests of the University with those of the Creator(s) on fair and reasonable terms.

## 2. Definitions

In this Policy, the following expression shall have the following meanings:-

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|-----|-----------------------|---|
| 2.1 | Conflicts of Interest | as defined in the University's Conflicts of Interest policy within the financial regulations document.  |
| 2.2 | Creator(s)            | any person or persons who creates, devises or invents an item of Intellectual Property.   |
| 2.3 | Intellectual Property | shall include copyright, patents, design rights, trademarks, trade names, service marks, database rights, plant breeders' rights, utility models, know-how, confidential information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any foregoing and all rights or forms of protection in any jurisdiction. |
| 2.4 | Teaching Materials    | any materials created within the University or on its behalf, that are primarily intended to be used by Staff or others or accessed by Students at any level, for the purposes of any course of study of those Students. Examples would include: handouts, lecture notes reading lists and other information to be provided to students and any audio, visual and multi media materials.          |
| 2.5 | Scholarly Materials   | text books, plays, lyrics, musical scores, oral presentations, popular non-fiction, novels and poems and works of fine art, articles written for publication in journals, editorials, conference papers and related presentations, notes created for own personal use, theses and dissertations and other similar materials as may be developed from time to time.                                |
| 2.6 | Staff                 | all persons employed by the University be it in an academic, research, technical, academic related or other position whether fixed-term or permanent .  |
| 2.7 | Students              | registered students of the University whether postgraduate, undergraduate or on an exchange scheme, non-graduating or otherwise and including postgraduate students during the period of writing up the results of their research.  |
| 2.8 | University Resources  | University facilities or resources including (but not limited to):-<br><br><ul style="list-style-type: none"><li>(i) office, laboratory &amp; studio space &amp; equipment;</li><li>(ii) computer hardware, software &amp; support;</li><li>(iii) secretarial services;</li><li>(iv) research, teaching &amp; laboratory assistants;</li></ul>  |

- (v) supplies & utilities;
- (vi) funding for research & teaching activities, travel & other funding reimbursements, equipment or time;
- (vii) central support services such as Finance Office, Legal support or technology transfer support.

- 2.9 Supervisor a member of academic staff responsible for supervising, assisting, guiding, monitoring or in any other way supporting a specified piece of academic or research work, including assessments, by a Student.
- 2.10 Commercial Office the University department responsible for the commercialisation of Intellectual Property, currently the Commercialisation & Consultancy Services Department.
- 2.11 University Aberystwyth University (Prifysgol Aberystwyth).
- 2.12 Institute any college, school, institute or other academic unit (or equivalent) as having primary responsibility for the delivery of programmes leading to the award of undergraduate and postgraduate degrees and other academic qualifications of the University and/or the conduct and promotion of research activity, participation in third mission activity or self-funded units and/or such other functions including but not limited to general services to the University.

### **3. Creation and Ownership of Intellectual Property**

#### **(A) Staff**

- 3.1 Staff will support the University in the implementation of this Policy and will provide assistance with activities associated with the protection and exploitation of Intellectual Property including avoiding disclosure of any potential Intellectual Property to any third parties until after discussing with the Commercial Office.
- 3.2 Subject to clause 3.3, and taking into account clause 3.15 the University shall own all Intellectual Property created by Staff:
- In the course of their employment and/or the performance of their duties for the University; or
  - Using University Resources; or
  - In the course of duties falling outside of normal duties but specifically assigned to Staff
- 3.3 Unless assigned to a third party under clause 3.15 (or clause 3.18), the University normally assigns to its Staff the Intellectual Property in Scholarly Materials and Teaching Materials. Staff grant the University a free, unconditional and perpetual, irrevocable, non-exclusive licence to use and copy such material for academic, research and administrative purposes (and where relevant a licence under clause 3.18). When Staff leave the University, this licence will remain in effect. This provision

is intended to be used to enhance the teaching and research capability of the University and compliment the teaching and research work of its employees. Where reasonable justification is provided the University agrees to consider non-use or only limited and specific use of these materials.

3.4 The University encourages the publication of Scholarly Material but Staff should consider the potential for commercial application of any ideas disclosed therein and should consult the Commercial Office where the potential for exploitation is identified. Where Scholarly Materials are submitted for publication, Staff will notify the publisher of the license between themselves and the University. Staff should also ensure when submitting Scholarly Material for publication that publication: -

- does not breach the Intellectual Property rights of any third party
- is not in breach of any duty or obligation of confidentiality
- does not prematurely disclose Intellectual Property of the University (these rights can be lost through early disclosure)
- does not compromise the University's rights in its Intellectual Property.

3.5 The University wish to encourage the use of digital archives and repositories, and in particular their own repositories. Subject to any rights properly given to any third party, Creators will give the University all necessary rights to place Teaching Materials or Scholarly Materials in digital archives and repositories. Creators may submit such materials to archives or repositories, provided that submission:

- does not breach the Intellectual Property rights of any third party
- is not in breach of any duty or obligation of confidentiality
- does not prematurely disclose Intellectual Property of the University (these rights can be lost through early disclosure)
- it does not compromise the University's rights in its Intellectual Property.

## **(B) Students**

3.6 Students shall own the Intellectual Property they create during the course of their studies and research, subject to the provisions in clause 3.7, or as otherwise as set out in this Policy.

3.7 There are circumstances where the University will own the Intellectual Property in a Student's work and the University may require a Student to formally assign their Intellectual Property to the University (or a third party as the case might be) before, during or after the course of their studies and/or research. These can include:-

- Where the Student is working on third party funded projects and the sponsor may want to own the Intellectual Property created. In such circumstances the Student confirms that they agree that the University may initially be required to own such Intellectual Property in order to comply with the terms of any agreement with the sponsor;
- Where the Intellectual Property cannot be separated from that developed by Staff. For example, where a Supervisor has significantly contributed to the

creation of new Intellectual Property in the research leading to the publication of a thesis, the fair and equitable approach would be to conclude joint ownership, subject always to the Student receiving a fair share of any revenue derived from such Intellectual Property.

- A student who wishes to work with the University to exploit their Intellectual Property and the University decides to do so.
- A Student creates Intellectual Property using University Resources not normally made available in the normal course of teaching and learning in their course of study.

3.8 A Student who has agreed to assign their Intellectual Property to the University under this clause will normally be treated for ownership and reward purposes, as though they are Staff of the University.

3.9 Where necessary Students agree to enter into written arrangements to confirm the assignment of Intellectual Property to the University in particular when third party rights or funding obligations require. Where a Student refuses to assign their rights in the Intellectual Property above, they shall not be prevented from registering unless it is a precondition in receiving funding for payment of their tuition fees that they assign such rights to the University. However, refusing to assign may result in the Student being re-assigned to another project or activity with immediate effect.

3.10 For the avoidance of doubt, Students who are also employees, or Staff registered for a degree or following a course of study shall be treated as Staff for the purpose of this Policy only where that employment relates to the academic activities of the institution.

3.11 Students grant to the University a perpetual, irrevocable licence to use the Intellectual Property they create during a course of study for non-commercial administrative, promotional, educational, quality control, examination and teaching purposes including but not limited to digitization of Student work. The copyright in a thesis written by a Student shall belong to the Student.

3.12 Students acknowledge that they might be required to keep the Intellectual Property they create confidential where publication may compromise the University's rights to such Intellectual Property, or an obligation of confidentiality owed by the University and/or the Student or otherwise.

3.13 A Student who remains uncertain of their rights and obligations in the protection of Intellectual Property is encouraged to consult with the Commercial Office in the first instance and seek independent advice if necessary. The Students Union should also be considered as a source of support for this purpose.

#### **(C) Non-Employees of the University**

3.14 Heads of Institutes are responsible for informing Human Resources of any academic visitor including visitors with honorary titles (for example, Emeritus and/or Honorary Professors) to their Institute. Heads of Institute shall also be responsible for ensuring that a written agreement is signed confirming ownership of all Intellectual Property invented or discovered by the visitor and/or any consultant(s) engaged by its Institute is put in place before such party undertakes any work for the University (paid or unpaid). If the academic visitor already has an employment contract with an outside institution, and if appropriate, an inter-institutional agreement between the University and the outside organisation will be put in place by the Commercial Office before any

work commences. The inter-institutional agreement will determine which institution owns and commercialises any arising Intellectual Property.

**(D) Agreements with Third Parties**

- 3.15 Intellectual Property may arise from research which is supported or commissioned by a third party (Research Council, Government, Industry, Charity) under a grant or contract, then the terms of the contractual agreement between the University and the third party will determine ownership, use, commercial exploitation and the rights, if any, of the University to any revenue from commercial exploitation. These terms may require that Staff and Students assign their rights in Intellectual Property to the University and/or the third party and the relevant Staff and Students will assign such Intellectual Property accordingly. When relevant, all Staff and Students involved in a research project supported or commissioned by a third party must be informed of the contractual issues by the principal investigator before the research starts.
- 3.16 Depending on the relative financial and intellectual contributions of the University and the third party organisation to a piece of work, it may be appropriate for either to own any arising Intellectual Property.
- 3.17 All Institutes will provide the Commercial Office with a copy of any contract containing Intellectual Property terms for approval prior to signing.

**(E) Teaching Materials and Scholarly Works to be used by the University.**

- 3.18 From time to time Teaching Materials and Scholarly Works created by Staff may be used by the University in various ways such as for commercial, societal or other purposes in addition to the academic, research and administrative purposes referred to in Clause 3.3. These may be partly supported by third parties or may be wholly funded by the University. The nature of the use could cover any area including but not limited to: teaching and learning, research, community projects, performances, shows, web-based ventures. Where the University requires the assignment or licence of relevant Teaching Materials and Scholarly Works created by Staff to the University for such purposes then Staff will promptly assign or licence the Intellectual Property in such Teaching Materials and Scholarly Works to the University. When Staff leave the University, this clause 3.18 will remain in effect and clause 5.4 shall apply.

**4. Procedures for and Obligations of Staff and Students**

- 4.1 The early identification of Intellectual Property created in the University is vital. Creators should always be alert to the prospective value of their research. Creators must notify the Commercial Office immediately of any Intellectual Property that they believe may have commercial value arising from their University work (or that of their Students):
- In the course of their employment and/or the performance of their duties for the University; and/or
  - Using University Resources; and/or
  - In the course of duties falling outside of normal duties but specifically assigned to the member of Staff, prior to any public disclosure.
- 4.2 Any invention and associated information should be kept confidential until after a full evaluation by the Commercial Office for exploitation potential and if appropriate, protection. The University encourages publication but Staff wishing to publish or

otherwise disclose must first contact the Commercial Office for a discussion regarding the most appropriate form of protection.

- 4.3 Inventions should be disclosed using the disclosure procedure required by the Commercial Office as amended from time to time who shall conduct a review to determine the ownership of the Intellectual Property and form a preliminary view of possible commercial potential.
- 4.4 The Creator(s) must give the University all reasonable assistance in formalising the ownership and registering the Intellectual Property.
- 4.5 The Creator(s) will work with the Commercial Office to facilitate the protection and commercial exploitation of the Intellectual Property when required, for example, working with lawyers, patent agents and in identifying potential licensees. The Creator(s) will give the University authority to execute any document that the University deems necessary to aid exploitation of the Intellectual Property.
- 4.6 Once the University has filed protection for Intellectual Property, the confirmatory assignment and revenue sharing agreement will need to be signed by the Creator(s). If there is more than one Creator to the Intellectual Property, then the distribution of their share of the income shall be determined by the individuals. If it is not possible to agree then the Vice Chancellor or their nominated representative will make a determination based on the contribution made by each Creator.
- 4.7 Creator(s) shall notify the Commercial Office of any actual or potential Conflict of Interest relating to any Intellectual Property either in their own circumstances or in connection with any other third party and to ensure compliance with the Conflict of Interest policy.
- 4.8 All University Intellectual Property will be regularly reviewed by Commercial Office and if it is no longer considered commercially exploitable then the Commercial Office may recommend to the University, the Creator(s) and Head of Institute(s) that, where appropriate, any protection be allowed to lapse and any other work on exploitation activities cease. If the University accepts such a recommendation but the Creator(s) nevertheless wish to continue to seek to exploit the Intellectual Property (and where necessary protection), at their own risk and cost, the University may, at its sole discretion, assign the Intellectual Property to the Creator(s) on mutually acceptable terms which reflect prior effort, and investment and future needs. In the event of such a transfer of rights to the Creator(s), the Creator(s) hereby grant to the University a, perpetual irrevocable, royalty free licence to use such reverted Intellectual Property for its own research and teaching purposes subject to the Creator bearing the costs of such assignment.

## **5. Distribution of Income (Revenue Sharing)**

- 5.1 Under this Policy the University wishes to reward and incentivise the identification of ideas for commercial and other exploitation. Where these activities generate income the University therefore seeks to share the income received from any exploitation with the Creators in accordance with this clause 5.
- 5.2 Payments received for the successful commercialisation of Intellectual Property through licensing or assignments are treated as gross revenue. They may take a number of forms, including one-off lump-sum payments, up front payments, option fees, milestone payments or royalties or otherwise. The University may on occasion receive shares instead of money. On these occasions the University will hold the

shares and distribute any income/capital receipts in the proportions defined in the table in clause 5.2 below.

- 5.3 Subject to clause 5.4, the University’s liabilities, which may include payments to third parties and expenses incurred from the Intellectual Property management such as patent fees, legal and commercial advice, will be a first claim on the gross revenue received.
- 5.4 Prior to distribution the University will normally recover any applicable legal and protection costs, prior to the distribution of revenue. The remaining net revenue will be shared between the University, the Creator(s) and the Creators’ Institute as follows:

<b>Cumulative Net Receipts</b>	<b>Creators*</b>	<b>Institute [School]</b>	<b>University</b>	<b>Commercial Office</b>
Up to 5k	100%	0%	0%	0%
5k – 50k	60%	15%	15%	10%
50k – 100k	40%	25%	25%	10%
Over 100k	30%	30%	30%	10%

**\* Individuals need not be Creators to benefit from the revenue from Intellectual Property**

- 5.5 Subject to clause 5.4 Creator(s) receiving a share of the revenue from exploited Intellectual Property in accordance with the above table will continue to receive their payments if they leave the University until the payments cease. In the event that the Creator(s) die, the estate of the deceased will receive their payments. The Commercial Office will be responsible for making arrangements to distribute any net revenue.
- 5.6 No distribution of income shall be made until the Staff and/or Students who are the Creators have reached agreement in accordance to clause 4.6 and agreements are in place between the individual(s) and the University. Where they all agree, Creators may agree to include additional Staff or Students in the distribution of income who have made a significant contribution to the IP but who are not deemed to be Creators under this Policy.
- 5.7 Each individual, who may be entitled to payments under the University’s revenue sharing arrangements must ensure that the University is notified in writing at all times of his or her current address to where any revenue payments due to him or her may be sent. If the University is not given such current address details then they will be designated a ‘missing individual’ and all unclaimed revenue payments may be invested in a deposit account until such revenue payments are claimed whilst all interest shall be retained by the University. The University will not be a trustee of any such unclaimed revenue payments.
- 5.8 Any revenue payments remaining unclaimed for 5 years from the date the revenue is received by the University will, after that date, be forfeited and will revert to the University and will be distributed plus any net interest between any others entitled to share in such revenue stream, excluding missing individuals(s).



- 5.9 Although under most circumstances the University will seek to comply with clauses 5.1 and 5.4 the University may review the terms of the policy from time to time and reserves the right to change its terms.
- 5.10 In addition, or even as an alternative to the usual revenue-share procedure, the University may agree for the University to take an equity stake in a company to exploit the Intellectual Property as set out in the Spin-out Policy (which is being developed subsequent to the implementation of this policy). Such agreement shall be confirmed in writing by each University's Director of Finance.
- 5.11 Payments made under the terms of this policy may be subject to statutory deductions such as taxation and national insurance. Relevant arrangements will be determined as each case requires ensuring compliance with legal requirements.

## **6. Dispute Resolution**

- 6.1 Any issues, dispute, claims or any clarification required as to any provision of this Policy should in the first instance be referred to the Director of the Commercial Office at the University who will liaise with the relevant Head of Institute or their nominee in considering the matter.
- 6.2 If a decision is not mutually agreed within a reasonable amount of time then the dispute can be referred to the **PVC for Research** who will make a determination.
- 6.3 If the parties seek outside advice in such a dispute, the costs of such advice will be borne by the party seeking it. The decision will be final and binding on all parties involved.

## **7. Compliance**

Any breach of this policy may be treated as a serious matter by the University and may result in action in accordance with each University's own Disciplinary Procedures.

## **8. Implementation**

This Policy shall not have retrospective effect. This Policy shall apply to all Intellectual Property disclosed to the University devised, made, or created on or after 12<sup>th</sup> February 2013. This Policy shall come into effect on 12<sup>th</sup> February 2013<sup>1</sup> and shall replace Aberystwyth's Intellectual Property Policy and Bangor's Intellectual Property policy dated August 1996.

## **9. Revision History**

This policy will be managed by the Commercial Office and approved by **the Executive in consultation with the Aber-Bangor Strategy Board**. It will be subject to periodic revision in consultation with the appropriate University bodies.

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<sup>1</sup> The date approved by Aberystwyth Executive