

SWANSEA UNIVERSITY'S POLICY ON INTELLECTUAL PROPERTY

1 Introduction and defined terms

1.1 This document sets out the policy and rules of Swansea University in respect of:

- the ownership of Intellectual Property created by staff of the University ("University Personnel");
- the use and commercialisation of Intellectual Property; and
- the implementation and administration of the Intellectual Property Policy.

This policy may be supplemented from time to time by guidance, made in accordance with the Procedures.

1.2 **to Commercialise means** to realise commercial or financial benefit through the exploitation of Intellectual Property, and **Commercialisation** shall be interpreted accordingly.

1.3 **to Create** means to create, devise, design, invent, discover, be the author of or otherwise originate any Intellectual Property and **Creator** shall be interpreted accordingly.

1.4 **Intellectual Property** ("IP") means (1) patents, copyright, database rights, design rights, trade marks, topography rights, plant breeders' rights and all other intellectual or industrial property rights whether registered or unregistered such as exist now or in future under the law of England and Wales, the law of the European Union or the law of any other jurisdiction throughout the world (2) the right to apply for, and applications for, such rights and (3) all extensions and renewals of such rights. Intellectual Property shall also include other intellectual assets such as inventions and discoveries and any other product or attribute of intellectual or academic activity (whether or not formal property rights subsist or are capable of subsisting therein) such as (but without limitation) know-how, knowledge and expertise, skills, techniques, and the results of experiments, tests, or calculations.

1.5 **University Personnel** means any members of staff or employees of the University.

1.6 **Procedures** means Swansea University's Procedures for Implementation of its Policy on Intellectual Property as amended from time to time in relation to the implementation and administration of this Policy.

2 General Principles

The general principles underlying this policy are:

- 2.1 The University owns the Intellectual Property created by University Personnel, except to the extent this policy provides otherwise.**
- 2.2 University Personnel who have created Intellectual Property which is Commercialised should receive a fair share of the commercial benefit, as should the University and the relevant University school(s).**
- 2.3 Whenever University funds, facilities, personnel or other resources are involved in (1) creating Intellectual Property which is exploited commercially or (2) undertaking other commercial activities, the University must obtain good value for its investment.**

This is because:

- As a charity the University has a duty to ensure that the use of its resources is properly accounted for and
- Most of the University's activity and resources is funded by public money. In general, public money or resources cannot be used to confer a direct or indirect benefit on a business undertaking, because of the danger of unlawful state aid. Where there is unlawful state aid, it must be paid back.

Nevertheless, where the use of University resources is insignificant in the creation of the Intellectual Property, the University may waive its ownership of the Intellectual Property having regard to guidelines established under the Procedures.

- 2.4 In respect of Intellectual Property which the University determines not to commercialise or otherwise exploit, the University should have the right to use that Intellectual Property for its own purposes and to receive a share of any benefits of commercialisation, but should not unreasonably refuse to license or assign the Intellectual Property to the Creator.**

3 Ownership of Intellectual Property - University Staff

- 3.1 By law, rights in any Intellectual Property created by an employee of the University during the course of his or her employment belong to the University.**

- 3.2 Intellectual Property created by a member of staff within his or her employed area of academic or research expertise during his or her period of employment with the University are presumed to have been created during the course of his or her employment, and so belong to the University.
- 3.3 In any event, if University funds, facilities, personnel or other resources are used, the University makes it a condition of use that any resulting Intellectual Property belongs to the University.
- 3.4 University Personnel have a duty to disclose to the University any Intellectual Property that they have created during their period of employment, which may reasonably be considered suitable for commercial exploitation. Subject to that duty, University Personnel must keep confidential at all times and must not publish or disclose any such Intellectual Property, except as expressly permitted by the University under this Policy or otherwise in writing.

4 Teaching Materials and other Academic Materials

- 4.1 The principle which the University applies to Teaching Materials and other Academic Materials is that the University should be entitled to use the IP for its own purposes and receive a share of any proceeds from commercialisation, but does not insist on ownership.
- 4.2 The Creator shall own the copyright in teaching materials, academic and other publications (books, articles etc), theses and dissertations, lesson plans and learning modules except where they are comprised of original computer software, details of an invention or other commercially exploitable information or know-how not in the public domain, or when the materials have been specifically commissioned by the University or in circumstances where Clause 6 is applicable and the University is contractually required to own the copyright.
- 4.3 The University shall be granted an unconditional, perpetual and irrevocable non-exclusive right to copy, use and modify these materials for all purposes connected with the University and any affiliated or subsidiary institution. The license related to Academic materials shall be non-exclusive. The license for Teaching Materials, lesson plans and learning modules shall be exclusive during the term of employment and non-exclusive thereafter. In its discretion, the University will provide reasonable and appropriate acknowledgement of the Creator.
- 4.4 The Creator shall not publish without the express written consent of the University commercially sensitive information of the University, details of any potentially patentable invention, or any information in violation of a Confidentiality Agreement between the University and a third party.

- 4.5 In the event the Teaching Materials or other Academic Materials or any other material covered by Clause 4.2 are commercialised, the University shall be entitled to receive 15% of any proceeds over £2000.
- 4.6 It is the obligation of the Creator to ensure that any license or assignment of the intellectual property rights in Teaching or other Academic Materials or any other matter covered by Clause 4.2 to a third party, such as an academic publisher, is made subject to the rights of the University to use and modify such materials.
- 4.7 The Creator(s) shall indemnify and keep the University indemnified against all costs, claims, damages or expenses incurred by the University or for which the University may become liable arising out of or relating to any use or commercialisation of the Teaching Materials or other Academic Materials or any other matter covered by Clause 4.2 by the author, including any tax, national insurance, and related interest and penalties.

5 Commercialising Intellectual Property

- 5.1 No University Personnel may, without express authority from the University, enter into any discussions, negotiations, arrangements or agreements with any person or organisation in relation to any Intellectual Property which belongs to the University.
- 5.2 University Personnel must inform the University of any potential Commercialisation of Intellectual Property. Unless the University expressly authorises otherwise, Commercialisation shall only take place via the University. The University shall determine if and how the University shall Commercialise Intellectual Property that it owns in accordance with the Procedures, including any provisions for consultation which are contained in the Procedures.
- 5.3 Generally, if the University decides that it does not wish to Commercialise Intellectual Property, the University will license or assign the Intellectual Property to the Creators where it can be shown to its reasonable satisfaction that assigning ownership or licensing will be on terms which are consistent with the University's obligations as a charity and the use of public funds. If the IP is commercialised by the Creator, the University will be entitled to a share of revenue in accordance with guidelines set out in the Procedures.
- 5.4. The University may, in accordance with the Procedures, issue disclaimers of ownership of Intellectual Property in appropriate cases or provide for a license or assignment of the Intellectual Property to the Creators.

6 Contract Research and Consultancy

- 6.1 Where the University enters into a contract for the supply of research or consultancy services, it is likely that there will be special provisions relating to IP generated in the course of supplying those services.
- 6.2 Any Intellectual Property generated by University Personnel in supplying those services will belong to the University, and will be dealt with in accordance with the relevant contract.

7 Revenue Sharing

- 7.1 The University will distribute the net revenue or other tangible benefit received by the University (after recovery by the University of its reasonable costs and expenses in connection with the identification, protection, Creation or Commercialisation of such Intellectual Property) deriving from Intellectual Property created by University Personnel in accordance with the following formula. Where there is more than one Creator, they will share their entitlement between them equally, unless they otherwise agree among themselves.

AMOUNT	CREATORS	UNIVERSITY	
		SCHOOL	UNIVERSITY
First £ 2000	100%	0	0
Next £2000-£20000	60%	30%	10%
Next £20,000-£100,000	50%	35%	15%
Next £100,000-£250,000	40%	40%	20%
Additional Amounts	35%	35%	30%

- 7.2 The University's commitment in Clause 7.1 is subject to and shall be modified to reflect:

- 7.2.1 any major overarching initiative(s) entered into by the University, following relevant consultations, which may have different reward models;
- 7.2.2 the Creator's right to receive other benefits through the Commercialisation process (primarily, equity ownership in a spin-out company, in which case if a creator accepts shares

or options over shares in the Spin-Out, the Inventor will not be entitled to receive additional revenue from the University).

8 Breach of Policy or Guidance

- 8.1 Any breach by University Personnel of this policy or of any guidance made in accordance with the Procedures may amount to a disciplinary matter and / or an infringement of the University's rights, and consequently may lead to disciplinary or legal action being taken by the University.

9 Implementation and Dispute resolution

- 9.1 Subject to Clause 9.2 below, responsibility for the implementation and administration of this Policy shall lie with the Vice Chancellor, who may delegate that responsibility to another person.
- 9.2 If the Vice Chancellor or Chair of Council is personally interested in any matter related to the University's IP or has some other conflict of interest with the University related to any commercial matter, then the functions of the Vice Chancellor and/or the Chair of Council (as the case may be) under this policy and the Procedures shall be exercised by such independent person or persons as the Council may determine.
- 9.3 The Procedures shall include an internal dispute resolution procedure.
- 9.4 In the event University Personnel allege that the University has not complied with this Policy and its Procedures, he or she may request that the matter be resolved by an arbitrator to be agreed upon between the University and the University Personnel, or if they are unable to agree on the identity of the person within one calendar month of the request to arbitrate, by an arbitrator appointed by the President of the Law Society of England and Wales. The arbitration will take place in Swansea and be conducted according to laws of England and Wales. The decision of the arbitrator shall be binding on the University and the staff member and the costs shall be borne as decided by the expert. Either Party would be free to bring proceedings in the courts in order to seek mandatory, declaratory or other relief which is not available from an arbitrator.