



**BIGELOW LABORATORY FOR OCEAN SCIENCES
(THE "LABORATORY")**

INTELLECTUAL PROPERTY POLICY

Statement on the Dissemination of Research Results

The prompt and open dissemination of the Laboratory's research results and the free exchange of information among scholars are essential to the fulfillment of the Laboratory's obligations as an institution committed to excellence in ocean research and education. *However*, matters of ownership, distribution and commercial development do arise in the context of innovation commercialization, which is an important aspect of the Laboratory's commitment to public service. Since innovation commercialization must be subordinate to the Laboratory's non-profit missions of ocean research and education, the dissemination of information must not be delayed beyond the minimal period necessary to define and protect the rights of the affected parties, e.g., less than 30, 60 or 90 days - depending upon the totality of the circumstances.

Purpose of this Intellectual Property Policy

The purpose of this Intellectual Property Policy is to make the Laboratory's innovations available to industry and others for public benefit, while providing recognition to individual creator(s)/author(s) and encouraging the prompt and open dissemination of research results.

Ownership of Intellectual Property

Rights to innovations (potentially-patentable or not), tangible research property, trademarks and copyrightable works, including computer software (collectively "Intellectual Property"), conceived or first actually reduced to practice in whole or in part by the Laboratory's Senior Research Scientists ("SRSs"), research staff members, post-doctoral research scientists and others, including visiting scholars, while employed by the Laboratory, or while otherwise receiving remuneration from the Laboratory, or while participating in Laboratory-related activities or industry-sponsored research and/or while using Laboratory funds, facilities, equipment or other resources administered by the Laboratory, are as follows:

1. Laboratory-owned Intellectual Property:

(a) Ownership of Intellectual Property conceived or first actually reduced to practice in whole or in part by SRSs, research staff members, post-doctoral research scientists and others, including visiting scholars, during the scope of their Laboratory employment, while otherwise receiving remuneration from the Laboratory, while participating in Laboratory-related activities or industry-sponsored research and/or while using Laboratory funds, facilities, equipment or other resources administered by the Laboratory; and

(b) Ownership of copyrightable works created as a "work-for-hire" or developed with the use of Laboratory funds, facilities, equipment or other resources administered by the Laboratory.

2. Ownership of Intellectual Property developed in the course of or pursuant to an industry-sponsored research or other agreement will be determined according to the terms of such agreement.

3. Creator(s)/author(s) will own Intellectual Property that is:

(a) Not created as a "*work-for-hire*" by operation of copyright law (a "*work-for-hire*" is defined, in part, as a work prepared by an employee within the scope of their employment) and not created pursuant to a written agreement with the Laboratory providing for a transfer of copyright rights or the vestment of copyright ownership in the Laboratory; or

(b) Not developed with the use of Laboratory funds, facilities, equipment or other resources administered by the Laboratory; or

(c) Not developed in the course of or pursuant to an industry-sponsored research or other agreement.

NB: In accord with academic tradition, except to the extent required by the terms of funding agreements, the Laboratory does not claim ownership to pedagogical or scholarly works, regardless of their form of expression. That is, Sections 1(b) and 3(c) above *do not* encompass *traditional academic activities*, e.g., the submission of publicly-funded research data to peer-reviewed scientific journals for the purpose of seeking publication, presentations at scientific meetings, etc.

Basis for the Laboratory's Intellectual Property Ownership

If Intellectual Property is conceived or first actually reduced to practice in whole or in part by a Laboratory SRS, research staff member, post-doctoral research scientist or others, including visiting scholars (i) during the scope of their employment by the Laboratory, (ii) while otherwise receiving remuneration from the Laboratory, (iii) while participating in Laboratory-related activities or industry-sponsored research and/or (iv) while using Laboratory funds, facilities, equipment or other resources administered by the Laboratory, then the Laboratory will own the Intellectual Property.

If the Intellectual Property is not subject to an industry-sponsored research or other agreement giving a third party Intellectual Property rights, then the issue of whether or not the Intellectual Property was conceived or first actually reduced to practice in whole or in part during the scope of the creator(s)/author(s) employment, whether or not the creator(s)/author(s) otherwise received remuneration from the Laboratory and/or whether or not the creator(s)/author(s) used Laboratory funds, facilities, equipment or other resources administered by the Laboratory will be reviewed by the relevant SRS in consultation with the Director of the Laboratory's Office of Corporate Alliances and Technology Transfer ("CATT") and a recommendation forwarded to the Laboratory's Executive Director. The Laboratory's Executive Director will make the final decision on this issue.

The Laboratory's Executive Director will also decide any dispute or interpretation of this Intellectual Property Policy. The Laboratory's Executive Director can request input and/or advice from the Director of CATT in the course of deciding any dispute or interpretation of this Intellectual Property Policy.

Intellectual Property Agreements

All members of the Laboratory's community (including visiting scholars) who are either employed by the Laboratory, otherwise receive remuneration from the Laboratory, participate in Laboratory-related activities or industry-sponsored research and/or use Laboratory funds, facilities, equipment or other resources administered by the Laboratory must agree to abide by the terms of the relevant Laboratory Intellectual Property Agreement ("IP Agreement") and sign the IP Agreement either at the time of hire or otherwise at the time of association or affiliation with the Laboratory, whichever applies to the circumstances.

By being employed by the Laboratory, by otherwise receiving remuneration from the Laboratory, by participating in Laboratory-related activities or industry-sponsored research and/or by using Laboratory funds, facilities, equipment or other resources administered by the Laboratory, the individual agrees to ***immediately assign to the Laboratory*** their rights, title and interest to any Intellectual Property conceived or first actually reduced to practice in whole or in part during the period of their employment by the Laboratory, during the period that they otherwise receive remuneration from the Laboratory, during their participation in Laboratory-related activities or industry-sponsored research and/or during the period they use Laboratory funds, facilities, equipment or other resources administered by the Laboratory, whichever period is *longest*.

The term of the IP Agreement lasts as long as the individual is employed by or otherwise associated or affiliated with the Laboratory and for six (6) months thereafter.

There are three different versions of the Intellectual Property Agreement, whose individual use is dependent upon the circumstances:

- (a) Intellectual Property Agreement for New Research Employees (New Hires);
- (b) Visitor Participation Agreement for Non-Employees plus associated Acknowledgement of Risk and Release Agreement for Non-Laboratory Personnel Using Laboratory Research and Education Facilities - for use by visiting scholars who will (i) otherwise receive remuneration from the Laboratory, (ii) participate in Laboratory-related activities or industry-sponsored research or (iii) use Laboratory funds, facilities, equipment or other resources administered by the Laboratory (Visiting Scholars only); and
- (c) Intellectual Property Agreement for New Research Employees or Visiting Scholars Who Have a Prior Existing and Conflicting Intellectual Property Agreement with Another Employer or a Prior Employer (New Hires and Visiting Scholars) plus associated Acknowledgement of Risk and Release Agreement for Non-Laboratory Personnel Using Laboratory Research and Education Facilities (Visiting Scholars only).

NB: For sake of clarity, neither the IP Agreements nor the Acknowledgement of Risk and Release Agreement described above in (b) and (c) encompass activities such as: (i) short-term hosted visits of the Laboratory's facilities (including the East Boothbay Ocean Research and Education Campus), (ii) attendance at public events hosted by the Laboratory, (iii) fee-based educational courses, workshops or other special programs (fee-based or supported by internal/external funds), e.g., "Phytoplankton Culturing Techniques," Keller-BLOOM Program or REU Program, or (iv) industry-sponsored research activities that are governed by a separate contractual arrangement negotiated by and between the Laboratory and an industry sponsor.

It is the responsibility of the relevant SRS to distribute IP Agreements and to collect signed copies. An IP Agreement should be signed in triplicate: one copy to be retained by the individual, one by the SRS and one forwarded to CATT.

Any questions regarding the meaning of any terms in the IP Agreement should be addressed to the Director of CATT. Copies of IP Agreements may be obtained from CATT.

Intellectual Property Commercialization Activities

There is one office responsible for addressing all Intellectual Property commercialization matters at the Laboratory: CATT. As such, CATT will negotiate the Intellectual Property-related terms for each research agreement with government sponsors, as well as all industry-sponsored research agreements. CATT also licenses any resulting Intellectual Property. All Intellectual Property derived from such sponsored research should be disclosed to CATT.

At the time the Intellectual Property is disclosed, it is assigned an internal CATT case number. CATT will review the Intellectual Property-related terms of the applicable research agreements and notify sponsors of the disclosures. A decision is then made as to whether commercialization will be accomplished most effectively by applying for patent or other legal protection. Industrial sponsors are usually granted rights to elect a license to Intellectual Property for which patent or other legal protection is sought; the specific terms are then negotiated with CATT.

More generally, CATT will pursue the licensing of Intellectual Property by researching the market for the Intellectual Property, entering into discussions with potential licensees, developing a business plan, negotiating appropriate licenses or other agreements, monitoring progress and distributing royalties to the creator(s)/author(s) in accordance with the Laboratory's Innovation Commercialization Cash Royalties/Equity Distribution Policy.

Innovation Disclosures and Government Compliance Obligations

The federal government funds a significant amount of research at the Laboratory and the Laboratory is obligated by federal regulations, especially the Bayh-Dole Act of 1980, to report promptly to the appropriate federal agency any potentially-patentable Intellectual Property conceived or reduced to practice during the course of a government-sponsored research program. The Laboratory similarly is obligated to report any developed Intellectual Property to its industrial sponsors who provide financial support for research.

To comply with these policies and contract terms, creators and authors must disclose to CATT any Intellectual Property created during the course of a sponsored research agreement or with the use of funds or resources administered by the Laboratory.

The form for reporting the creation of Intellectual Property is entitled the Innovation Disclosure Form ("IDF"). Copies may be obtained from CATT. Among other things, the IDF will identify the sponsor that funded the research resulting in the creation of the Intellectual Property.

CATT will be responsible for all Bayh-Dole Act-related reporting obligations (via *iEdison*), as well as ensuring that all innovation commercialization-related contracts comply with Bayh-Dole Act-related government rights requirements.

Consulting Activities and Consulting Agreements

Consulting activity outside of the Laboratory is permitted; *however*, the consulting activity cannot conflict with the individual's primary responsibilities to the Laboratory or with their responsibilities to other public or private sponsors of their research. The Laboratory's Executive Director must authorize all consulting relationships. Further, all consulting agreements must be reviewed (and negotiated if necessary) by CATT and approved by the Laboratory's Executive Director *before* they are executed. That being said, it is ultimately the responsibility of the individual members of the Laboratory community to ensure that the terms of their consulting agreements with third parties do not conflict with their commitments to the Laboratory.

Each individual should make the nature of their obligations to the Laboratory clear to any third party for whom they are being asked to consult. Specifically, the scope of the requested consulting services should be clearly distinguished from the scope of the individual's research and/or education commitments to the Laboratory.

Further, any questions regarding the Laboratory's Conflicts-of-Interest/Conflicts-of-Commitment Policy and the Laboratory's Policy on Consulting Activities and Associated Consulting Agreements may be submitted to the Director of CATT.

Teaching or Distance Education Materials

In the case of copyrightable teaching or distance education materials developed by an SRS, research staff member, post-doctoral research scientist, or others, including visiting scholars, the Laboratory's mission is best served by allowing the author(s) to decide when, how and in what form the teaching or distance education materials should be disseminated. *However*, if significant Laboratory funds or resources are involved in producing the teaching or distance education materials or if there were contractual requirements to produce the teaching or distance education materials, e.g., Colby College's January Program, then the Laboratory will own the teaching or distance education materials via written copyright assignment from the author(s) and will be responsible for dissemination decisions.