

Intellectual Property Management and Exploitation Policy

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Revision Date	Description	Sections Affected	Revisited By	Approved By
June 2019	New Intellectual Property Management and Exploitation Policy	Revision of entire Campus Company and Inventions & Patents Policy	Commercialisation Office Director, VP Research	Governing Authority
September 2019	Edits and additions as requested by Governing Authority,	Membership of IP compliance committee. Clarifications relating to open source software. Clarifications relating to open access publication.	Commercialisation Office Director, VP Research	

1 Introduction/Background/Objectives

This document sets out in policy terms how Maynooth University (MU) will manage and exploit intellectual property (IP) created by MU personnel during their employment, subject to other contractual arrangements and regardless of place of employment. The procedures described herein follow national guidelines and represent MU's compliance with the national system. MU recognises that this policy should be cognisant of and compatible with academic freedom and will work with MU personnel to ensure that the other duties of teaching, research, publication and societal engagement remain fundamental to MU. Further, the University is committed to not exploiting its IP in any unethical way.

This policy supersedes and replaces the Inventions & Patent Policy of 22/09/08 and Campus Company Policy of 22/09/08. This Intellectual Property Management and Exploitation Policy is managed and maintained by the Vice President of Research and Innovation. Queries in relation to the content of this document should be emailed to: commercialisation@mu.ie

The current revision of this document can be found at:

<https://www.maynoothuniversity.ie/research/commercialisation-office/researcher-resources/commercialisation-policies>

The objectives of the Maynooth University IP Exploitation Policy are:

1. To ensure Maynooth University is compliant with the National IP Protocol (2012 and revised in 2016 and 2019) and national policies for the management, protection and exploitation of intellectual property.
2. To document a clear set of principles that facilitate the efficient transfer of knowledge and technology that incorporates Maynooth University IP.
3. To provide genuine incentives to MU personnel to identify and develop commercially viable IP arising out of their research and/or other work. This includes sharing in the financial benefits of such commercialisation to the Inventor or Creator of intellectual property.
4. To utilise Maynooth University's share of the financial and other returns from the commercialisation of IP to advance and encourage research and commercialisation in Maynooth University.

2 Definitions

Background IP	Any Intellectual Property, including any material, (regardless of the form or medium in which they are disclosed or stored) which is
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	<p>(i) licensed or owned by any party to a research contract prior to the beginning of any research programme; or</p> <p>(ii) generated or licensed independently of the research programme by that party;</p> <p>and which is brought into, or used as part of, the research programme, and excluding (for the avoidance of doubt) any IP created by any party to a research contract during the performance of the research programme.</p>
Intellectual Property (IP)	IP: Patents, trademarks, service marks, registered designs, drawings, utility models, design rights, business ideas, concepts, inventions, discoveries, breeders' rights, copyright (including the copyright in software in any code including topography rights), database rights, know-how, trade secrets and other confidential information, technology, business or trade names, goodwill and all other rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not, and including all applications and the right to apply for any of the foregoing rights
Foreground IP	IP created during the course of a particular research programme
MU personnel	For the purposes of this document MU personnel are specified as: <ul style="list-style-type: none"> (i) Persons in permanent, part-time, or contract employment with Maynooth University, and engaged in research or teaching as part of their MU employment; (ii) Maynooth University postgraduate research students; (iii) Other Maynooth University students engaged specifically in research activities where Maynooth University resources are used (e.g SPUR students).
Inventor/Creator	MU personnel who invent or contribute significantly to the invention or creation of IP, as documented in the invention disclosure form, along with their respective inventive contributions.
Spin-out	A private limited company founded for the principal purpose of commercially exploiting Maynooth University IP.

3 Ownership of Intellectual Property

All IP, and the associated rights, created by MU personnel during the normal course of their duties and/or in their fields of research or expertise, unless varied by some other contractual arrangement, is and will be owned by Maynooth University. Examples of such contractual arrangements which may alter IP ownership are shown below.

How ownership of IP generated by Visiting Researchers to Maynooth University or of IP generated by Maynooth University researchers visiting another institution is dealt with will be determined on a case by case basis, taking into account the nature of research, the source of funding and the duration of the visit.

	Funding Model				
	100% Company/Private Funding			Joint Public/Private Funding	100% Public Funding
Programme Type	Company Managed and Directed	Jointly Directed and Managed. MU Introduced Knowhow and Background IP	Consultancy	Jointly Directed and Managed. MU and Company Introduce Knowhow and Background IP	MU Managed and Directed
IP Ownership	Company owns all IP	Employer of Inventor/Creator owns IP. Jointly created Foreground IP is jointly owned	Generally, all Foreground IP is assigned to the Company	MU owns all Foreground IP as per IP Protocol model, other models apply with EU funding, etc.	MU owns all IP
IP Access	MU may have IP access rights for research purposes	Company gets non-exclusive, royalty free access to MU jointly created Foreground IP		Company gets first option to negotiate license to MU Foreground IP. Creation of Spin-Out Company may be considered	IP commercialised via licensing or creation of Spin-Out Company

Table 1 IP Ownership and exploitation in Funded Research Programmes

3.1 Exceptions

Maynooth University makes no claim to:

1. Works of copyright (scholarly articles, papers, books or book chapters, multimedia) related to teaching, literary criticism, etc., which have been created in the course of a MU personnel member's employment by Maynooth University or otherwise commissioned or paid for by Maynooth University or through Maynooth University under contract from a third party. Generally, copyright of course materials (e.g lecture notes, assessment materials) is owned by the academic who created the material; however the University retains the right to use such course materials for its own educational and research purposes. NOTE: For the purposes of this policy, any copyright or design rights incorporated in software do not fall under this exception.
2. IP created by MU personnel outside the course of their normal duties, including research duties, and which has been developed without the aid of any Maynooth University resources.
3. IP Created by MU personnel assigned to a research programme 100% funded (including overhead) by an external 3rd party.

4 Management and Procedures

4.1 Commercialisation Office

The Maynooth University Commercialisation Office, reporting to the Vice President of Research and Innovation is responsible for the following functions:

1. Create, foster and inform an IP aware research culture.
2. Evaluate the commercial viability of projects proposed by MU personnel and whether this justifies and / or necessitates formal protection of IP.
3. Prosecute the legal protection of IP (patent, registered design etc.) where appropriate and possible.

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4. Decide on how such a patent application is pursued, including on when to cease such applications, in cooperation with any licensees as applicable.
5. Locate and negotiate with third parties to develop IP to a point where it is commercially viable and/or capable of being licensed on commercial terms.
6. Decide, with input from the inventor(s), what is the appropriate exploitation route.
7. Negotiate the commercial terms, and recommend and draft the terms of the license of such IP, working with the Inventor or Creator so that the IP is successfully commercialised, such license to be approved and signed off by the Vice President of Research.
8. Support the formation of Spin-Out companies, when such opportunities arise, working with the Inventor or Creator to develop the business plan, and recommending the terms of the license of IP and MU subscription for shares, such two agreements to be approved and signed off by the MU Bursar/Secretary.

4.2 MU personnel Responsibilities

In order to protect intellectual property with a view to commercialisation, it is essential in some circumstances to delay the publication of research. This is normal practice, and follows the principle “protect first, then publish”. The University requires its staff to take all reasonable measures to protect intellectual property with commercial value and, if in doubt, to make reasonable enquiries as to whether there is intellectual property of value to be protected, before submitting material for publication. This applies to all forms of publication, including open access publication.

To put this into practice, MU personnel shall report any potentially commercial IP developed by them to the Commercialisation Office by completing and submitting the Invention Disclosure Form (IDF - available at <https://www.maynoothuniversity.ie/research/commercialisation-office/researcher-resources/guides-forms-documents>)

The integrity and confidentiality of such identified Intellectual Property shall be of prime concern. Maynooth University and the Inventor/Creator shall ensure that Intellectual Property is not disclosed in such a way as to destroy their patentability, e.g. by premature public disclosure.

The Inventors / Creators of IP shall seek the approval of the Commercialisation Office before making any such disclosure.

No disclosure of Intellectual Property can take place without an appropriate Non-Disclosure Agreement (NDA or Confidentiality Disclosure Agreement) being in place.

MU personnel shall do everything that may reasonably be required of them to assist Maynooth University to protect, maintain and exploit the disclosed IP, including executing all documents which may be necessary to prove, confirm or perfect the title of Maynooth University to any such IP.

4.2.1 Special note on Software/Databases

While the software itself may not be patentable, software created by MU personnel will be covered by copyright, and project software may be an implementation (or partial implementation) of an invention. Even if the implemented software does not embody an invention it will more than likely include details of project knowhow, the knowledge of the researcher who implements the software. This knowhow is valuable when transferring knowledge. A targeted outcome from a research programme is the dissemination of knowledge whether that is through journal papers, conference proceedings or posters etc. However, an often-overlooked valuable knowledge transfer tool is software. Because software implements all or some of a project it means that those receiving the project output can ‘see’ immediately the knowledge being transferred. Software can be bought and sold. If you buy software you generally buy a license to use the software.

If the intention is to exploit IP via software, the Commercialisation Office and/or the research programme IP committee (if in operation) shall be consulted before any decision on a licensing model for software or

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databases created by MU personnel is made which may affect how that software or database is disseminated/commercially exploited.

In respect of open source software, consultation with the Commercialisation Office on the appropriate form of licensing is not required prior to the publication of the software, unless the creator intends to exploit IP via the software.

4.3 Evaluation and Protection of IP

Upon receipt of an IDF the Commercialisation Office will initiate procedures to evaluate the patentability and potential commercial viability of the Invention.

The Inventor/Creator will have an active role in assisting the Commercialisation Office in its evaluation of the disclosed IP in the IDF. Further development and commercialisation of the disclosed IP shall proceed with close collaboration between the Inventor/Creator and the Commercialisation Office.

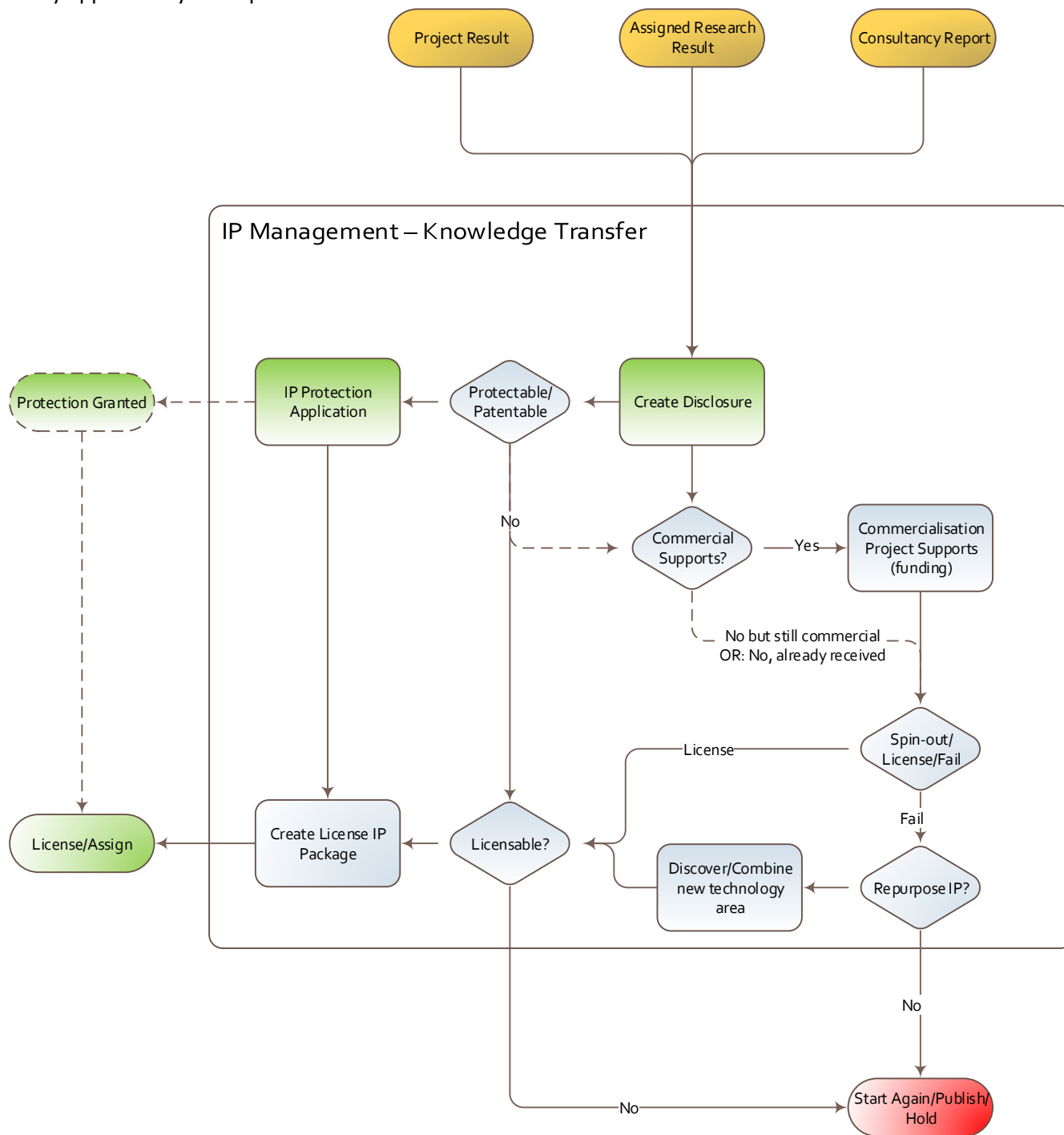


Figure 1 General IP Evaluation and Exploitation Procedure

If Maynooth University determines that it does not wish to attempt to commercialise (and / or protect if appropriate) an item of disclosed IP then, Maynooth University, upon the Inventor's request, may formally assign its rights in the IP to its Inventors / Creators. Any assignment shall be subject to the following:

- that it is not precluded by third party rights or prior agreement with third parties.
- that it does not infringe upon Maynooth University's ability to attract funding or comply with the requirements of any funding party.
- that it does not infringe State Aid rules (see details on State Aid at: http://ec.europa.eu/competition/state_aid/modernisation/rdi_framework_en.pdf)
- that any use or commercialisation of the IP occurs outside of Maynooth University and on the Inventors / Creators own time.
- that the Inventors / Creators agree to an anti-embarrassment clause in the assignment agreement.

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Any dispute between Maynooth University and the Inventor will be forwarded to a special three-person panel consisting of one person representing the Inventor, one person representing Maynooth University and a third member agreeable to both parties. The panel shall have full access to any records relating to the matters in dispute in the possession or power of the Inventor or Maynooth University.

4.4 Conflict of Interest

In the commercialisation of Intellectual Property, MU personnel shall adhere to the Maynooth University Research and Commercialisation Conflict of Interest Policy by declaring any conflicts that may exist as early as possible before or during any engagement with or participation in a funded research programme.

4.4.1 Personal Consultancy (external remunerated professional activity)

Where MU personnel are permitted to engage in personal consultancy, the MU policy on external remunerated professional activity applies. In the course of such personal consultancy MU personnel must at all times avoid:

- Using any Maynooth University resources (other than office space and personal computer, but including software, laboratories and other equipment).
- Working without appropriate disclosure with a third party where the MU staff member is also working in a Maynooth University collaborative research programme with the third party.
- Using confidential material learned while working in a Maynooth University collaborative research programme with the third party.
- Using Intellectual Property created in any funded research programme other than general knowledge and knowhow gained during that programme.

4.5 Managing Compliance

The Intellectual Property Compliance Committee, consisting of:

- VP Research and Innovation (chair)
- Director of Commercialisation
- Director/Lead PI of an Institute or Research Programme (appointed by VPRI)
- Head of Department of a department within the faculty of Science and Engineering (appointed by VPRI)
- Bursar/Secretary and
- A nominee of the President approved by Governing Authority.

will meet on an annual basis, or as otherwise necessary, to review the status of Maynooth University's IP management and compliance with the National IP Management Requirements. Where issues exist the committee will make recommendations as to how the issue can be remedied and will have the responsibility to ensure the remedy is implemented. The Intellectual Property Compliance Committee will report on an annual basis to the University Executive. The Committee's report will be made available publicly on the Maynooth University website. The Intellectual Property Compliance Committee will also review the Commercialisation Office Risk Register annually.

4.6 Governance

4.6.1 National IP Protocol

Maynooth University implements the IP management procedures detailed in the National IP Protocol (originally published in 2012 and then revised in 2016 and in 2019). The National IP Protocol provides a framework for best practice, guiding on the expected norms for research-related engagements between industry and State research performing organisations (RPOs). The National IP Protocol comprises two volumes (links can be found in section 7 of this document): The policy document which sets out the framework underpinning research collaboration and access to intellectual property from state-funded research; and the resource guide which provides an overview of the national IP management guidelines and links to a wealth of resources and template documents that support these guidelines. It also provides an overview of the knowledge transfer structures in Ireland and the kinds of agreements that can be used to formalise research-industry engagements.

4.6.2 National IP Management Requirements

	Requirement	Details	Maynooth University Implementation
1	<i>Adopt and disseminate a policy for IP commercialisation that includes the Minimum Requirements for an IP commercialisation policy</i>	This IP Management and Exploitation Policy should include all details regarding the Minimum Requirements as spelled out in the 2019 National IP Protocol Resource Guide	This document
2	<i>Ensure early awareness of the importance of IP management amongst Researchers.</i>	Appropriate programme of IP awareness is delivered by the TTO to the RPO Researcher community.	Actively tracked and managed by the Commercialisation Office
3	<i>Set obligations of individual Researchers to ensure IP is managed in a professional way.</i>	Principal Investigator confirms that - as accountable Project leader – he/she is aware of their particular responsibilities in respect of the Collaborative Research Agreement. All Researchers involved in the Project confirms that they have read and understood the Collaborative Research Agreement.	On award of a funded research programme, the lead PI is required to complete and sign the Lead Researcher Undertaking: https://goo.gl/CMph0P Each researcher employed to work on a funded programme is required to sign the Researcher Undertaking: https://goo.gl/B7ty4r
4	<i>Maintain confidentiality before publication and confidentiality of data provided by others.</i>	Include suitable confidentiality terms and suitable processes for pre-publication review in Collaborative Research Agreement.	MU ensures that contracts with industry parties and MU personnel members participating in research programmes contain appropriate confidentiality obligations and uses all reasonable endeavours to ensure compliance with confidentiality procedures. For example, in an externally funded collaborative research programme, the Research Programme Publication Review shown in section 12 of this document applies.
5	<i>Protect IP arising from research Projects or Programmes.</i>	Appropriate Programme of IP awareness is delivered by the TTO to the RPO Researcher community. RPO has adequate procedures in place. TTO undertakes due diligence and appropriate protection of IP arising from research Project or Programme and in accordance with terms Collaborative Research Agreement.	Actively tracked and managed by the Commercialisation Office In close cooperation with Research Development Office and the research programme Lead PI. Full range of KTI approved research programme collaborative contracts available and adopted and used by MU.
6	<i>Introduce existing Background IP into a Project diligently.</i>	Background IP to be introduced into a research Project or Programme by all parties is detailed in the Collaborative Research Agreement. RPO completes a Background IP Due Diligence Form prior to signature of the Collaborative Research Agreement.	Actively tracked and managed by the Commercialisation Office in close cooperation with the Research Development Office and the research programme Lead PI.
7	<i>Conduct appropriate due diligence before licensing IP.</i>	Researcher and TTO complete Invention/IP Disclosure Form which also includes a Background IP declaration.	Invention Disclosure Form: https://goo.gl/TmOnX
8	<i>Maintain records of IP and licences.</i>	TTO has robust IP and licence management systems and databases in place.	Actively tracked and managed by the Commercialisation Office
9	<i>Manage conflict of interest.</i>	RPO has a published policy for management of conflict of interest.	Conflict of Interest Policy: https://goo.gl/tvJ3hJ
10	<i>Implement systems for the sharing of income from the commercialisation of IP within the RPO.</i>	RPO has a published IP Policy for commercialisation and revenue share (this document).	This document

5 Putting Intellectual Property to Work

The National strategy, Innovation 2020 (2016), mandates that “*We will promote more extensive commercialisation of public research*”¹. Delivering on such a mandate means that Maynooth University actively supports putting intellectual property to work in two ways: Creating Spin-Out Companies and/or licencing IP on commercial terms. In all cases, Maynooth University will seek to commercialise Intellectual Property in accordance with best practice and with national guidelines.

5.1 Creating Spin-Out Companies

The formation of a Spin-Out Company is chosen if the Intellectual Property is best exploited through (and is capable of supporting) a new company rather than an existing one.

Maynooth University provides supports to Spin-Outs through MaynoothWorks, the Maynooth University business incubation centre. By locating in MaynoothWorks a Spin-Out can benefit from having a prestigious business address and proximity to the broad range of expertise that exists on campus. Appropriate charges for such services will be agreed on the establishment of the company. The University or its employees cannot provide any service, which requires a licence or is subject to regulation without an appropriate agreement with the Spin-Out in place.

The establishment of a Spin-Out requires that a detailed business plan, a suitable management team and investment are all in place. In some cases the Maynooth University Inventor/Creator may leave Maynooth University to join the Spin-Out full-time. In other cases, the Maynooth University Inventor/Creator will remain in Maynooth University and not take an executive role in the Spin-Out Company (although they may provide scientific support on an ad-hoc basis). The management team will be asked to form a company, usually with a standard company constitution. Maynooth University will then license Intellectual Property subject to execution of a Licence Agreement and a Subscription and Shareholders agreement. The Inventor, the management team, the investors and Maynooth University will subscribe for equity in the Spin-Out Company.

Maynooth University will subscribe for shares based on its exclusive licensing of the Invention without requirement for upfront payments, on fair commercial royalty rates, and for the supports it can provide to the Spin-Out. Such Maynooth University shareholding will either be:

- a) 20% of issued share capital if Maynooth University subscribes for shares before an external and significant cash investment is made in the Spin-Out; or
- b) 15% of issued share capital if Maynooth University subscribes for shares in the Spin-Out at the same time as the first significant seed investment by an angel or other investor is made.

Maynooth University may choose to dispose of its shares as it sees fit, subject to any terms of restriction in the Spin-Out company constitution and the Subscription and Shareholders Agreement. Any financial gain from such equity sale shall vest exclusively in and be for the benefit of Maynooth University.

5.2 Commercial Licensing

In instances where Intellectual Property is not sufficiently strong or broad enough to trigger the creation of a Spin-Out, then the best commercialisation opportunity for a particular piece of Intellectual Property may be to license it to an existing company. With the assistance of the Inventor/Creator, the Commercialisation Office will have the sole responsibility to negotiate a licence to a third party on an exclusive or non-exclusive basis and at fair and reasonable commercial terms to the maximum benefit of Maynooth University.

¹ Innovation 2020 (2016), p.62

6 Rewarding Creators of Intellectual Property

It is recognised that the development of Maynooth University intellectual property is dependent on the existence of satisfactory incentives to provide rewards to Maynooth University Inventors/Creators. Maynooth University is also committed to the provision of non-financial rewards for such activities including academic recognition, improvements in the department's facilities and funds for research.

If Intellectual Property is licensed to an existing company or to a Spin-Out, royalty income (after any direct expenses incurred by Maynooth University are deducted) will be available for distribution to the Inventors/Creators of that Intellectual Property.

The following scale will apply in the sharing of cumulative royalty income available for distribution as an incentive to Inventors:

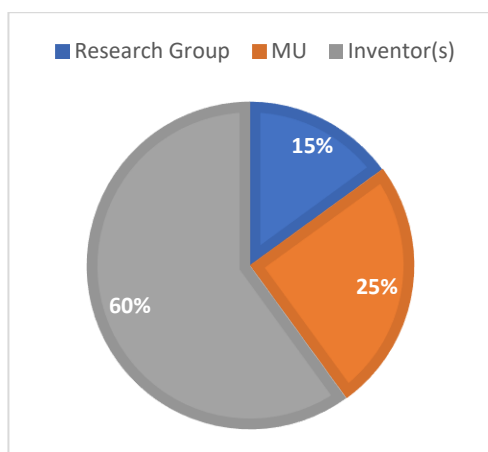


Figure 2 All net royalty income below €100k

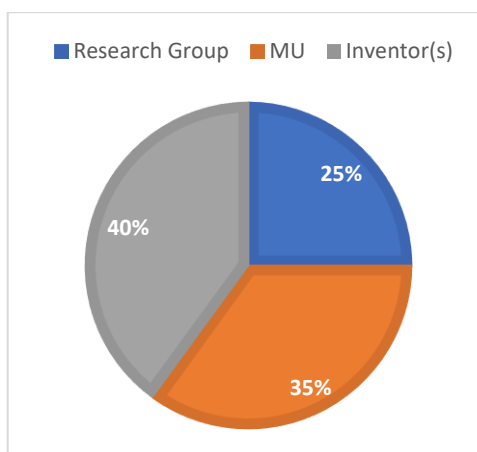


Figure 3 Subsequent net royalty income above €100k

Direct expenses may include legal and other expenses and costs involved in protection and any subsequent investigation, development and promotion, which will be deducted from the initial royalty income (including milestone, maintenance or lump sum payments).

If more than one Inventor/Creator or research group is involved, the relevant royalties will be divided in proportion to the material innovative contribution made by the MU personnel concerned to the development of the Intellectual Property, as determined by the Commercialisation Office at its sole discretion. Account shall also be taken of the effort and skill which each Inventor devoted to the project. It is essential that good research records are prepared during the course of each project. Inventors/Creators proportional contributions are recorded in the Invention Disclosure Form submitted to the Commercialisation Office.

Note the following Exception on Royalty Distribution:

If Intellectual Property is commercialised via a licence granted by MU to a Spin-Out and the Inventor/Creator takes founding equity in that Spin-Out, then the Inventor/Creator will not be entitled to receive any share of the royalty income that results from the licence. If there are multiple Inventors/Creators and not all take founding equity shares then the distribution of the share of any royalty income arising from the licence to be distributed by MU to Inventor(s)/Creators will be made on a pro rata basis amongst the Inventors/Creators not taking any founding equity shares in the Spin-Out.

7 Resources

7.1 National Policies and Strategies

Innovation 2020	https://www.djei.ie/en/Publications/Publication-files/Innovation-2020.pdf
National IP Protocol (2019)	https://www.knowledgetransferireland.com/Reports-Publications/Ireland-s-National-IP-Protocol-2019-.pdf
National IP Protocol (2019) Resource Guide	https://www.knowledgetransferireland.com/Reports-Publications/IP-Protocol-Resource-Guide.pdf

7.2 Maynooth University Policies and Templates

Note: some URL's have been shortened for convenience.

University Policies	https://www.maynoothuniversity.ie/research/research-development-office/policies
Conflict of Interest Policy	https://www.maynoothuniversity.ie/sites/default/files/assets/document/NUM%20Conflict%20of%20Interest%20Policy%202013.pdf
Invention Disclosure Form	https://www.maynoothuniversity.ie/sites/default/files/assets/document/INVENTION%20DISCLOSURE%20FORM_rev6_1.docx
Related MU Forms	See Guides, Forms & Documents in the Commercialisation Office Resources on the University website: https://www.maynoothuniversity.ie/research/commercialisation-office/researcher-resources/guides-forms-documents

8 Spin-Out Approval Process

8.1 Pre-requisites:

Commercially viable Intellectual Property that has been evaluated by the Commercialisation Office as being capable of supporting the creation of Spin-Out.

A well-developed Business Plan with a strong business case that may be created during the course of the research programme. Support of a person(s) that would form the basis of the management team for the newly created Spin-out. This person will need to have a commercial background and have first-hand knowledge of creating and growing a knowledge intensive Spin-Out.

Approval for the creation of the spin-out and MU equity holding by the MU Bursar / Secretary, on the recommendation of the Commercialisation Office and VP Research.

Approval of the Bursar/Secretary for any MU staff member to hold a directorship in the spin-out.

8.2 Ethical issues:

If the proposed Business plan outlines a use of the licensed MU IP for a product of service that raises potential ethical questions, the VP Research will convene a meeting of the Intellectual Property Compliance Committee to discuss the proposed exploitation, and the University reserves the right to refuse any exploitation that it considers unethical.

9 Dispute Resolution

This policy document is issued for the purpose set out in the introductory paragraphs. No obligations will bind Maynooth University arising out of it otherwise than in accordance with the terms and conditions of any agreements negotiated in the manner referred to above and formally accepted by Maynooth University. The laws and regulations of Ireland shall govern any such agreement. Any disputes arising out of or in connection with any such agreement which are not resolved through mediation or arbitration shall be settled by the relevant court in Ireland.

10 Date of Initiation

This policy shall be effective from 21st September 2019

11 Review of this policy

This policy can be amended by a decision of the Governing Authority at any time. A formal review of the policy will be carried out every four years and within six months of any national policy change.

Appendix 1: Model Research Programme Publication Process

This publication process is best practice and generally used in the case of funded multi-partner collaborative research programmes such as SFI Centres, etc.

