

INTELLECTUAL PROPERTY RIGHTS (IPR) POLICY



BRAINWARE UNIVERSITY

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1. Preamble

Brainware University (BWU) is dedicated in providing academic excellence in teaching, research and dissemination of knowledge for the development of the society. The University was established on 25th February, 2016 under the West Bengal State Govt., Act XXXI of 2015 with the objectives “to provide instruction, teaching, training and research in various branches and specialized fields of study of Science, Technology, Medicine, management, Law, Humanities, Social Sciences, education, Performing Arts, Sports and any other fields of study including imparting of skills that have employment potentiality”. Thus, there is an inherent need to encourage creativity and scholarly works for the developments of new and useful materials, devices, processes and other intellectual property, in the responsibility of producing and disseminating knowledge. The university activities, focused around faculty/students/project staff/supporting staff/visitors, are based on knowledge and intellectual exercise. Such exercises may lead to evolution of intellectual property know-how, copy-rights, designs, instruments, devices, processes, specimen, software and other inventions having potential for commercialization with or without the registration under different Acts enacted by the Government for protection of intellectual properties. Keeping this in mind, this Intellectual Property Rights Policy Document of Brainware University (hereinafter referred to as BWU) seeks to provide guidance to academic and non-academic staff, students, scholars, and outside agencies on the practices and the rules of the Institute regarding intellectual property rights (IPR) and obligations which include the nature of intellectual property (IP), its ownership, exploitation, technology transfer and confidentiality requirements. The policy laid down in this document is expected to fulfil the commitment of the University to promote academic freedom and provide a conducive environment for research and development.

It is not possible to address all the possibilities in this policy, as the scope of intellectual property and the mechanism for the transfer of technology are vast. However, the aim of the university is to generate intellectual property for society use and benefit while raising income to support teaching and research.

2. The Policy Objectives

BWU has formulated this intellectual property policy for the management of intellectual property to:

- a. Nurture, stimulate and encourage creative activities in the areas of Technology, Science and Management.
- b. Safeguard the interest of creator of intellectual property and provide fair distribution of returns accruing from the commercialization of IPR.
- c. Protect the legitimate interests of the University, faculty, scholars, students and other members of the University and the society at large and to help resolving possible conflicts of opposing interests.
- d. Provide legal support, wherever necessary, to defend and protect the intellectual property rights obtained by the Institute against any infringement/unauthorized use.
- e. Evolve an organizational structure and its procedures through which inventions and discoveries made in the course of university research may be made readily available to the public through channels of commerce.
- f. Establish standards for determining the rights and obligations of the university, creator of intellectual property (for example inventors, developers, authors) and their sponsors with respect to inventions, discoveries and works created at the university.
- g. Preserve the academic freedom to publish the research results by the academicians and also to make them aware that if they do decide on public release, the patent system cannot be brought into play thereafter.



- h. Ensure compliance with applicable laws and regulations and enable the university to secure sponsored research funding at all levels of research.
- i. Create an environment for acquiring new knowledge through innovation and research, compatible with the educational mission of the Brainware University.

3. Types of activities which qualifies as IP

- a. Research taken up by a BWU faculty/student/project staff/supporting staff/visitor from funds coming from a sponsor such as Government of India, state governments, international agencies, or foreign governments, etc.
- b. Research taken up by a faculty/student/project staff/supporting staff /visitor in the normal course of his/her appointment/engagement at BWU with funds issued from BWU (this would include research projects undertaken by students under the supervision of the faculty member)
- c. Research supported by companies and other private organizations through research projects or consultancy assignments
- d. Collaborative research undertaken with other institutions including government departments and agencies, PSUs and private companies located in India
- e. Collaborative research with institutions and companies located outside India, and
- f. Any combination(s) of the above

Ownership of IP in the above mentioned situations may not be defined/specified in the same way.

4. Ownership of Intellectual Property

4.1. IP generated from Research collaboration, Consultancy Assignment, Copyright on Software, Contract work

4.1.1. Exclusive or whole ownership of IP by BWU

- a. Properties including inventions, software, designs and integrated circuits, specimens, developed by creators as a result of University research or created by substantial use of University funds/facilities.
- b. Properties developed using external funds/facilities, including, that of sponsored research and consultancy projects without any associated agreement.
- c. Software or technology or process developed over a period of time with contribution from different individuals of/for BWU which is not assignable to an individual or a specific group of identifiable contributors.
- d. Property developed under any work commissioned and/or outsourced from BWU, or under any contractual arrangement viz. 'work for hire'.
- e. Property generated under a written agreement where ownership has been transferred to BWU.

4.1.2. Exclusive or joint ownership (with BWU) of IP by third party

- a. Property generated from a consultancy assignment awarded to a member by a sponsor/client will generally be owned by the sponsor/client. However, if significant resource(s) of the university are used, or if the assignment is only partly funded by sponsor, the university will negotiate with the sponsor joint ownership of the IP so generated.



- b. Property generated with the use of external funding from third party(ies) including sponsored research, consultancy projects and other collaborative activity(ies) with a formal associated agreement.
- c. Property developed without external funding from third party(ies) but under collaborative project(s) or activity(ies) with third party(ies) with associated agreement(s).
- d. Property developed out of the work carried out by faculty/student/project staff/supporting staff of BWU during their visit to a third party Institution/organization will be subject to IPR policy of that institution/organization. However, if the IP so generated has its origin while working at BWU prior to the visit, the University and the organization may enter into an agreement to jointly own the IP or assign IP to either organization.

4.1.3. Ownership of IP by inventor

- a. If none of the situations defined above for BWU or Third party ownership applies, and the IP is unrelated to the inventor's engagement with BWU. The engagement implies responsibilities associated with employment, for faculty and staff. It is also expected that the person concerned would have pursued these activities outside of the normal working hours of BWU and without hindering any responsibility towards BWU.

4.2. IP generated from Start-ups

- a. IP generated by start-ups that are part of BWU's incubation program shall be owned by the start-up.
- b. This will remain so even though members are engaged with a start-up company on a part-time basis or full-time basis on leave from the university (this is also covered by policy statement concerning IP generated during a member's visit to another organization on leave from the university).
- c. IP generated by a start-up which has been the brainchild of a faculty and student alike, BWU and the start-up may enter into an agreement to jointly own the IP or assign IP to either organization.

4.3. IP generated from Published Materials, Creative Common License

- a. Brainware University shall be the owner of the copyright of work, including software, created by the university personnel with significant use of university resources. Brainware University may demand assignment of the copyright in whole or in part depending on the degree of Brainware University - supported resources used in producing the copyrightable work.
- b. The Brainware University shall be the owner of the copyright on all teaching materials developed by the university personnel as a part of any of the academic programs at the university.
- c. BWU understands that faculty and students all over the world prefer to publish their research outcomes or creative works in the form of journal articles, papers presented in conferences, newspaper articles, or as books. They do so in order to ensure that the research outcome is disseminated globally, and in the shortest possible time.
- d. BWU also recognizes that faculty and students sometimes prefer to place their creative works under one of the creative common licenses that allows members to retain copyright



while allowing others to copy, distribute, and use their work. They do so with a view to contribute to growing and collective wealth of knowledge for everyone to freely use.

- e. As a consequence, BWU encourages its members to publish their findings in journals, conferences, newspaper articles, or as books, etc. or share their work under the creative common licenses, even as the university recognizes that relevant publishers will own copyright to such works. In all such cases, the University will not seek to own rights to such IP.
- f. However, members should understand that publication in a journal or at a conference, or as a book or placing their creative works in Creative Commons may jeopardize any effort later to file a patent application.

4.4. Copyright owned by the student

- a. Copyrights of thesis, dissertations, term papers, laboratory records, and of other documents that are produced by a student during the course of his/her study will reside with the student unless restricted by an associated agreement and/or research carried out using facilities that have come to BWU with pre-imposed IP protection restrictions.
- b. For claiming ownership of copyright for thesis and dissertations, the student(s) has/have to declare that the thesis does not include any information that needs IP protection by BWU.
- c. Further, any IP generated (other than copyright) out of the work carried out by the student would be covered as per Clause 4.1.1 and Clause 4.1.2 of Section 4.1.
- d. If any such work could not be protected before submission of the thesis, concerned inventors should take steps to protect the IP within a period of one year of submission of thesis. BWU would have a mechanism in place for processing such thesis in order to protect the confidential information during this period.

4.5. Trade Mark(s)/Service Mark(s)

- a. Goods and services involving BWU should be trademarked with BWU and the university will be the sole or exclusive owner.
- b. The users of BWU name through trademark will be bonded with certain standards and accountability.
- c. Third parties can use the name of BWU with proper trademark only if the property has been licensed by the university through a signed agreement.
- d. Prior approval of BWU is mandatory in the matter regarding the use of BWU's name and trademark in any electronic and digital media.

4.6. Copyrights owned by third parties

a. Software

BWU expects its faculty/staff/students/visitors to be aware about agreements made to the Third party related to software and databases. It may happen that BWU faculty/staff/students /visitors use software and databases for creating IPs which are not under licensed agreement by BWU with the Third party. Such software will have license restriction on IP creation and usage of such can hamper the institute policy in a legal sense. Therefore, prior settlement of any such license related issues with the Third party regarding software is essential before initiating IP protection.



Software of general use shall be procured with valid license.

b. Other copyrighted material (other than software)

It is strongly suggested that BWU and its faculty, students, supporting staff, project staff and visitors:

- i. Will not violate the copyright law of the nation related to any material,
- ii. Would use copyrighted materials for only personal use, teaching and research purposes as permitted by Indian law, and
- iii. Would not use copyrighted material in their thesis, publications, reports and other professional documents without taking explicit prior permission of the copyright holder.

4.7. Patent

Brainware University will require to be assigned to it such intellectual property as is created by the creators through the use of university supported resources. In this case, Brainware University will take steps to commercialize the property through patenting or agreements. Where a patent is applied for, the creator shall agree to maintain all relevant details of intellectual property secret and confidential until the patent application is filed. In the case of protection through confidentiality, the same information will be kept secret and confidential as long as the intellectual property has commercial value. The creator shall furnish such additional information and execute such documents from time to time as may be reasonably requested for effective protection and maintenance of proprietary rights of Brainware University in the intellectual property.

4.8. Bio-diversity

Brainware University affirms that it abides with the national laws on biodiversity and traditional knowledge. Inventor(s) has/have to ensure that the provisions under the national laws on biodiversity and traditional knowledge are not violated during the course of securing any IP protection or use of such knowledge.

5. Applicability of IPR Policy

- a. This policy on IP rights (IPR) will apply to full-time members of the university (and this includes faculty, staff and students).
- b. This policy on IPR will also apply to all part-time “Guest” or “Adjunct” faculty or part-time students, but only to the extent of their engagement with the university.
- c. This IPR policy will also have a bearing on an agreement that the university signs with a sponsoring organization, collaborating organization or with a vendor.

6. Policy of IP licensing and Assignment

In order to encourage commercialization of IP registered and owned by Brainware University, inventor(s) of such IPs shall be encouraged to promote a start-up company (following the guidelines established by Brainware University for developing a business proposition leveraging the IP under consideration. For this purpose, the start-up can also be accommodated at the Technology Business Incubator Unit, if so desired by the Inventor(s), after critical appraisal of the Business Plan as per applicable procedures of Brainware University. The start-ups in the specified instances shall be licensed IPs owned by Brainware University on a limited exclusivity basis initially for a period of 3 years. The licensing fee may be decided depending on the nature of funding available for such a venture



including the possibility of making the know-how/technology available even without any license fee. However, all such licensing should be accompanied by an appropriate agreement and a monitoring mechanism. During the limited exclusivity period, the start-up shall have 'no rights to sub-license' to any Third party. Once the start-up venture establishes the commercial viability within the limited exclusivity period, the license agreement shall be re-visited and modified into exclusive over an extended period with a royalty consideration, the quantum of which shall be determined by Brainware University.

In case the start-up fails to achieve commercial breakthrough within the allotted period, the exclusivity of the license to the start-up shall be forfeited.

7. IPR Administration:

This policy shall be applicable to all Brainware University personnel, as well as non-University personnel associated with any activity of the Brainware University such as, but not limited to outcomes of research, consultancy or Continuing Education Programmes, and covers different classes of Intellectual Property – Patents, Designs, Trade Marks/Service marks, Copyright, Integrated Circuits Layout, Trade Secret and undisclosed Information.

8. Disclosure:

When the creators believe that they have generated patentable or commercialize-able intellectual property using Brainware University resources, they shall report it promptly in writing along with relevant documents, data and information, to Brainware University authority through the appropriate authority using the Invention Disclosure Form of the Brainware University. Disclosure is a critical part of the IP protection process for claiming the inventor-ship. The information shall constitute a full and complete disclosure of the nature, particulars and other details of the intellectual property, identification of all persons who constitute the creator(s) of the property, and a statement of whether the creator believes he or she owns the right to the intellectual property disclosed, or not, with reasons. In case of the sponsored and/or collaborative work the provisions of the contract pertaining to disclosure of the creative work is applied. By disclosure the inventor(s) shall assign the rights of the disclosed invention to Brainware University.

9. Grant of licensing IP for commercialization:

- a. BWU will evolve processes, together with terms for one-time (or periodic) royalty payments, by which it grants license, or outright transfer, to a third party for commercialization of IP that it solely owns, or jointly owns with a collaborator.
- b. In case of any IP it co-owns with a collaborator (or sponsor), BWU will engage with the collaborator before granting license to a third party for commercialization of IP.
- b. In some cases the third party referred to may be the collaborator with which BWU co-owns the IP.
- c. BWU will be liberal in granting license to a startup if one of the inventors of IP is a promoter of the start-up.
- d. BWU will seek to retain the right to use the IP for purpose of teaching and continued research at the university, even in cases where IP is licensed or transferred to a third party,.
- e. BWU will evolve a formula for sharing with inventors a part of the royalty payments it receives as a result of licensing the IP or for its outright transfer, which will form part of the consultancy policy document.



10. Infringement

The following acts amount to infringement of an Intellectual Property of Brainware University -

- a) The colourable imitation of an invention.
- b) Immaterial variations in the inventions.
- c) Mechanical equivalents.
- d) Taking essential features of an invention.
- e) The taking of any essential feature or the whole of the mark.
- f) Substantial copying.
- g) Direct evidence of copying from the source in which the copyright subsists.
- h) Acts of plagiarism without recognizing Brainware University contributions.

11. Monitoring and responding to infringement of IPR:

- a. In case of any IP the University owns, or co-owns with a collaborator, the university will evolve mechanisms to monitor infringement of IPR by another organization, and suitably respond to any infringement. Towards this the University will evolve a mechanism to monitor and respond suitably.
- b. In case of IP it co-owns with a collaborator:
 - i. The university will monitor and respond in case a collaborator infringes on the university's rights in violation of the IPR sharing agreement with the collaborator.
 - ii. The university will make every effort to ensure that its own faculty and students do not infringe upon IP rights co-owned with collaborators, or IP that is solely owned by third parties.

12. Liability of the University for Infringement of IPR:

- a. The University will not be liable or responsible in any manner for the violation of the IP rights by its faculty and students or collaborator in the event of any claim or criminal or civil action or suits or proceedings initiated by third parties for infringement of their IP rights.

13. Confidentiality:

All Brainware University personnel associated with any activity of Brainware University shall treat all IP related information which has been disclosed to the IPR Cell and/or whose rights are assigned to Brainware University, or whose rights rest with Brainware University personnel, as confidential. Such confidentiality shall be maintained till such date as is demanded by the relevant contract, if any, between the concerned parties unless such knowledge is in the public domain or is generally available to the public. Having filled the Disclosure Form, the creator shall maintain confidentiality i.e. refrain from disclosing the details, unless authorized otherwise in writing by Brainware University authority.

14. Legal Jurisdiction:

As a policy, all agreements signed by Brainware University and dispute(s) arising there from, will be subject to the legal jurisdiction of the Calcutta High Court only and shall be governed by the appropriate laws of India.