

Balancing Innovation and Fair Sharing: Practical Options for IP Licensing and Benefit Sharing



By

Abbe E. L. Brown

Professor in Intellectual Property Law, University of Aberdeen, Scotland
abbe.brown@abdn.ac.uk

ABSTRACT

IP owners can be faced with different demands on how to most effectively deal with their important assets alongside commitments to fair and equitable benefit-sharing in line with international frameworks on biodiversity and also with sustainability and climate action. This piece discusses work leading to model licences and policy wording developed in an EU-funded interdisciplinary project. The piece shares the documents which are openly available, and invites future use of the materials.

Introduction

Combining the generation of value from IP assets with an IP owner's sustainability, corporate governance and environmental social and governance (ESG) approaches, and including obligations which might apply to innovation from earlier in the research and development change from use of genetic resources, can be complex. This balancing can involve expertise often found in different parts of a law firm or organization; yet if the perspectives are dealt with entirely separately, there is a risk that points will not be identified fully, and this could have adverse business and reputation consequences.

BlueRemediomics,¹ an international interdisciplinary research project funded by the European Union Horizon Europe Programme and UK Research and Innovation, provides some paths through these spaces. The project developed wording for use in policies and webpages; pledges,

1 See BlueRemediomics website <https://blueremediomics.eu/> Horizon Europe Grant Agreement No. 101082304 and UK Government's Horizon Europe funding guarantee IFS 10057167 (University of Aberdeen).

open licences, and suggested clauses for use in a negotiated licence; and guidance notes.²

These materials were developed as part of BlueRemediomics' aim to ensure equitable access to and sharing of benefits derived from new products (such as new medicines or cosmeceuticals) developed from natural products and the marine microbiome.³ The proposals made could, however, be of use to businesses working in any sector, particularly those which have a link – direct or indirect – with natural resources.

This piece identifies some key aspects of the new BlueRemediomics materials and some important factors for consideration in relation to the different suggested paths. Readers are encouraged to consider the resources in full and, as appropriate, make use of them (with an acknowledgement) and further develop them.⁴

Decisions To Be Made

The path to be taken to IP rights will always depend on the priorities and decisions of an IP owner from time to time, and on the full set of relevant facts. An established approach is to gain as much commercial reward as possible from the IP owner's investment

2 See Policy Brief "Balancing Innovation and Fair Sharing: Practical Options for IP Licensing and Benefit Sharing October 2025 Guidance for IP Rights Holders on Access and Benefit Sharing (ABS) and Sustainability" <https://blueremediomics.eu/wp-content/uploads/2025/10/IP-Licensing-Policy-Brief.pdf> and Policy Brief "Balancing Innovation and Fair Sharing: Practical Options for IP Licensing and Benefit Sharing October 2025 Guidance for IP Rights Holders on Access and Benefit Sharing (ABS) and Sustainability. Additional Content" <https://blueremediomics.eu/policy-brief-balancing-innovation-and-fair-sharing-practical-options-for-ip-licensing-and-benefit-sharing-additional-content/>.

3 BlueRemediomics explores harnessing the Marine Microbiome for Novel Sustainable Biogenics and Ecosystem Service, through developing industrial processes that reduce waste, increase the reuse of natural products and by-products, and improve aquaculture processes.

4 All comments are most welcome to abbe.brown@abdn.ac.uk

in developing or acquiring an IP right, and in many cases IP owners will still choose to take this path. Alternatively, in some cases IP owners may choose to allow broader use of an IP right for the more collective good – supporting global sustainability, climate change⁵ or health goals. Such an approach may reduce short-term revenue for the IP owner but could strengthen reputation, collaboration and long-term impact. It is suggested that decisions about licensing approaches should be reviewed regularly as part of a wider strategy and business planning.

A more open approach to IP could sit alongside the possibility of an IP owner's ESG policy, including commitments to moving beyond compliance, engaging proactively with the power and influence which an organisation can hold over its customers, suppliers, licensees and wider society; and to looking beyond short-term profit, pursuing socially and ethically driven models of shareholder value (e.g., committing to emission reduction and enhancing environmental sustainability).⁶ In a similar vein, an IP owner may wish to demonstrate how it is choosing to operate in the context of obligations on states under the Convention on Biological Diversity⁷ (and its Cali Fund⁸ and Nagoya Protocol⁹), the Global Biodiversity Framework,¹⁰ the UN Marine Biodiversity Beyond National Jurisdiction Agreement,¹¹ The Sustainable Development Goals,¹² the Paris Agreement¹³ and the WHO Pandemic Treaty.¹⁴

Delivery: Balancing IP and Benefit Sharing

A key early consideration involves looking beyond IP. A resource – such as in essence plankton or bark

5 For example, linked with initiatives such as <https://chancerylaneproject.org/>, which includes Benjamin's "Licence Intellectual Property: Free Licence for Climate Purposes" (2021) *Climate Solutions IPR Licence | The Chancery Lane Project*

6 This could build on, for example, *International Sustainability Standard Board; Global Reporting Initiative Biodiversity Standard GRI 101; Union for Ethical Biotrade; Bcorp; Recommendations of the Taskforce on Nature-related financial disclosures; ISO social responsibility 26000.*

7 1760 UNTS 30619 (entered into force 29 December 1993).

8 Decision CBD/COP/DEC/16/2* and "Multilateral Mechanism and the Cali Fund – Cali Fund Guide 2025," <https://www.cbd.int/califund>.

9 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, opened for signature 22 February 2011, UNEP/CBD/COP/DEC/X/1 (entered into force 12 October 2014).

10 Decision CBD/COP/DEC/15/4 and Kunming-Montreal Global Biodiversity Framework, <https://www.cbd.int/gbf>.

11 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, A/CONF.232/20234*.

12 UN Sustainable Development Goals.

13 UNFCCC 2015 Paris Agreement 3156 UNTS 79.

14 WHO Pandemic Agreement 20 May 2025 WHA78.1. Regarding scope for intersection across regimes, see also Scarlett Sett *et al.*, "Harmonize rules for digital sequence information benefit-sharing across UN frameworks" *Nature Communications* 15, 8745 (2024); Bitá Amani, Caroline B Ncube and Matthew Rimmer, (eds), *The Elgar Companion to Intellectual Property and the Sustainable Development Goals* (Edward Elgar, 2024), especially chapters 1, 10, and 15; and DOSI Policy Brief "Towards coherence and avoiding undermining: policy recommendations on implementation of the BBNJ Agreement regarding marine genetic resources" (2025) <https://blueremediomics.eu/wp-content/uploads/2025/12/BBNJ-Policy-Recommendations.pdf>.

– might have been shared and provided to scientists by a community, for example under the Nagoya Protocol of the Convention on Biological Diversity, with restrictions and requirements on use. The terms might include returning benefit to the community, for example through a percentage of sales, joint ownership of IP, or building a school in a community.

In such circumstances, a very open sharing of an IP right, no matter how consistent this might be with an ESG policy, is unwise. It should also be borne in mind that these benefit sharing obligations might extend as far as a third-generation product from a genetic resource or digital sequence information on the genetic resource (broadly, resources in digital form, from the original resource or are the results of manipulation of digital information obtained from public databases).

Delivery: Open Sharing

If open sharing appeals to an IP owner and there are no relevant benefit sharing restrictions, IP owners could choose to share under an "open licence." By this, the IP owner grants a licence to anyone who wishes to take the licence up on particular preset terms, possibly also with a linked website with a list of rights and an "I agree" button. One of the best-known examples is Creative Commons.¹⁵ This initiative has evolved into a complex set of licences, from a "public domain" explicit waiver of rights to a licence which permits specific acts. Open licences are usually for no fee.

BlueRemediomics has developed the Sustainability and Sharing IP Public Licence¹⁶ with a "Label" and also "Legal Code." This licence can be adapted to suit different contexts and levels of openness, using standard terms such as Non-Commercial (NC), No Derivatives (ND), Attribution (BY), or Share Alike (SA). It should be borne in mind that some businesses who receive material on an open basis, or future purchasers of the business, might be nervous about the technology, as they may consider that they cannot assess fully the risks which could arise.

Delivery: A Pledge

Another option is the pledge. A complete pledge is rare, given the significant costs and time which can be involved in obtaining rights. But having a patent or design and then pledging it in some circumstances can still enable a business to demonstrate its innovation and leadership in a field (for example with the non-profit making COVID Moonshot).¹⁷ IP owners could

15 Creative Commons CC BY 4.0 and see also *Apache Licence, BioS/CAMBIA Open Licence.*

16 See <https://blueremediomics.eu/wp-content/uploads/2025/10/5-The-Sustainability-and-Sharing-IP-Public-Licence-SSIPPL.pdf>.

17 See "COVID Moonshot" <https://dndi.org/research-development/portfolio/covid-moonshot/>.

publicly commit to making IP available for responsible use. These pledges – sometimes called “non-assertion commitments” – can support equitable access to technologies in times of emergency, in low income or resource limited settings, or for humanitarian and climate-related purposes.¹⁸

An IP owner could also choose to prioritise recognition and reward through a period of enforcement or licensing; the IP owner could then choose to prioritise creating an industry sector in which members choose to share and learn from each other. This could reduce freedom to operate difficulties and enhance sector sustainability and manufacturing capacity.¹⁹

For pledges, BlueRemediomics provides wording and guidance notes to help IP owners tailor the scope, duration, and conditions of pledges, notably in line with the IP owner’s sustainability and ESG goals.²⁰ It is wise to confine any limits in a pledge to points which can clearly be established (such as if the other party sues the rights holder) and, from a manageability point of view, to not involve any monitoring or reporting.

Delivery: Negotiated Approaches

Often, a more targeted approach will be more suitable to a particular arrangement, both in terms of substantive clauses and financial terms. BlueRemediomics provides model licensing clauses with accompanying guidance notes.²¹ The clauses provide a flexible basis for negotiation, allowing adaptation to sectors, technologies, and partnership contexts such as regarding humanitarian use,

18 See Moderna Updated Patent Pledge(2022).

19 Tesla “Patent Pledge” https://www.tesla.com/en_gb/legal/additional-resources; Toyota “Toyota Promotes Global Vehicle Electrification by Providing Nearly 24,000 Licenses Royalty-Free” (2019) <https://global.toyota/en/newsroom/corporate/27512455.html>; Gabriela Lenarczyk and Mateo Abov, “OpenAI’s patent pledge: a post-Moderna analysis” *Journal of Intellectual Property Law & Practice* Volume 20, Issue 6, (June 2025), Pages 392– 397; Jorge L. Contreras and Meredith Jacob, (eds), *Patent Pledges: Global Perspectives on Patent Law’s Private Ordering Frontier* (Edward Elgar, 2017)

20 See <https://blueremediomics.eu/wp-content/uploads/2025/10/4-Model-text-and-Guidance-for-responsible-IP-non-assertion-pledges.pdf>.

21 See <https://blueremediomics.eu/wp-content/uploads/2025/10/3-Implementing-responsible-licensing-Model-clauses-and-guidance.pdf>.

purposes and technologies, sublicensing, and reporting, which can be helpful for ESG and benefit sharing.

Regarding payment, an IP owner could choose to seek adequate and fair reward for the innovation and creativity that has been obtained by the IP owner, or for a “reasonable fee.” This could be linked with fair, reasonable and non-discriminatory licensing, which is part of many formal industry standards and competition law. It is again important to check what other obligations have been imposed – for example, if there is an existing best endeavours provision in relation to maximising sales, then these approaches would not be suitable.

Conclusions

BlueRemediomics has aimed to provide a holistic and workable approach to laws relating to benefit sharing, IP and sustainable development goals. Readers are warmly invited to visit the website and look at the resources in full. It is hoped that these resources will be of use to all in working with clients and colleagues, and that they provide paths for reflections on balance reward and sustainable sharing, and the possible emergence of new communities of practice. Comments on use would be gratefully received. ■

ABOUT THE AUTHOR

Abbe E. L. Brown is a Professor in Intellectual Property Law at the University of Aberdeen and Solicitor admitted to practice in England and Wales, Victoria (Australia) and Scotland. Abbe would like to thank the BlueRemediomics project, of which she is part, and its APPLE group. Abbe was a practising IP lawyer and a member of LES for many years and served on the Committee of the Scotland Branch. Abbe continues to work with colleagues in industry and in the profession notably through the Scottish IP Network. These proposals were discussed at The Intellectual Property Conference at Scots Law 2025, Murrayfield Stadium on 28 October 2025.

Email: abbe.brown@abdn.ac.uk