

# Intellectual Property Policy

## Section 1 - Introduction

(1) The University is committed to fostering a culture which advances scholarship, promotes innovation and supports the dissemination of knowledge for public benefit. It recognises that intellectual property (IP) created as a result of these activities is a significant and valuable asset, which must be responsibly managed to support the mission of the University, acknowledge the rights of contributors, and optimise benefits for our communities.

(2) This policy provides clear guidance on the University's position in relation to the ownership and management of intellectual property including its creation, use, sharing, protection and commercialisation within the organisation's [risk management framework](#). It supports the National Principles of Intellectual Property Management for Publicly Funded Research identified by the Australian Research Council.

(3) The ownership of intellectual property created by staff members and students of the University is determined by the terms of this Policy which should be read in conjunction with the [Intellectual Property Procedure](#).

## Section 2 - Policy Intent

(4) This policy is intended to promote and encourage the dissemination of knowledge, the advancement of teaching, learning and research and the availability of knowledge for the public benefit.

(5) The principal objectives of this policy are to give certainty about IP rights in the University, to encourage and support scholarly activity and to allow any staff member or student of the University (or group of them) who creates, whether or not in conjunction with another person, any IP ("the originator") to share in the benefits of commercialisation of University IP, which is IP owned by the University according to the terms of this policy or otherwise as a matter of law.

## Section 3 - Document Specific Definitions

(6) course of their duties - means for a staff member the scope of the duties as a staff member as set out in the terms and conditions of any relevant Workplace Agreement, contract of employment, position description, duty statement or other agreement between the staff member and the University in effect at the time at which the University IP or other intellectual property was generated;

(7) staff member - means a person who was at the relevant time employed by the University and includes professional staff of the University, but does not include visitors or conjoint appointees of the University;

(8) Course materials - means:

- a. any copyright work whether in electronic, written or any other form of media created by a staff member specifically for use in, or in connection with a course, subject or unit offered or to be offered by the University or by an affiliated provider;
- b. any materials commissioned by the University specifically for use in, or in connection with a course, subject or

unit offered or to be offered by the University or by an affiliated provider unless there is an agreement to the contrary.

(9) Computer works include without limitation:

- a. computer software in any form and on any medium;
- b. multi-media works in any form which are accessible wholly or partly by means of a computer;
- c. webpages and websites;
- d. copyright works created with the intention of accessing them primarily by computer; but
- e. does not include works in the public domain.

(10) purposes - means the purposes of the University from time to time as expressed in the [University of Newcastle Act 1989](#) (NSW) and the University's Strategic Plan and supporting plans;

(11) University project - means a self-contained program of work or research administered by or on behalf of the University which is funded by:

- a. an external source; or
- b. a specific direct allocation of infrastructure support or other University resources beyond that which is ordinarily provided to a School or other University organisational unit, Priority Research Centre, Research Institute or University Research Centre.

(12) commercialisation/commercialise - in relation to intellectual property means to make, sell, copy, adapt, apply, publish, develop, use, assign, licence or otherwise utilise the intellectual property for the purpose of generating financial or other commercial gains. For the purposes of this policy this definition excludes fees paid by students enrolled in a program leading to a University of Newcastle award.

## **Section 4 - Ownership of Intellectual Property Created by Staff**

(13) The University owns all IP created by staff members within the course of their duties except for:

- a. artistic works (painting, sculpture, drawing, engraving, photograph or any other artistic work in any medium);
- b. Indigenous works (a copyright work created predominantly by people of Aboriginal or Torres Strait Islander descent);
- c. scholarly works (copyright work which is the conventional output of academic staff members, including academic publications, journal articles, presentations, papers, books and other creative works, but does not include course materials or computer works); or
- d. IP where ownership is provided for in an agreement entered into with the University or approved by the University.

### **Artistic Works**

(14) The copyright in an artistic work created by a staff member in the course of their duties is owned by the creator of the work and the University makes no claim to ownership of the copyright in such works;

(15) Where there is doubt about whether a work is to be regarded as an artistic work, the Deputy Vice-Chancellor (Research and Innovation), after obtaining advice from suitably-qualified advisers, will determine the matter.

## **Indigenous Works**

(16) The University acknowledges that the intellectual and cultural property rights of Indigenous peoples should be respected and preserved and to that end:

- a. claims no ownership of copyright in Indigenous works; and
- b. will refer any areas of doubt in relation to whether a work should be regarded as an Indigenous work to the Deputy Vice-Chancellor (Research and Innovation), who will consult with relevant Indigenous and other groups within the University and, if necessary, more broadly, to determine the matter.

## **Course Materials**

(17) The University owns the copyright in course materials created by staff members except that:

- a. the University's ownership of such course materials is subject to any pre-existing rights in copyright works which are incorporated in the course materials. Where there are such pre-existing rights, the University will obtain a licence to use any such works;
- b. course materials, other than course materials referred to in Clause 17 (c) below, may only be published by a staff member, including by electronic means, with the prior written authorisation of the Head of School or the staff member's supervisor; and
- c. course materials may be published by a staff member without the need to obtain authorisation where the publication:-
  - i. is via the Learning Management System; or
  - ii. is solely for use in the teaching of a University course or program or a University-approved course or program, either directly by a staff member or by another institution under a written contract with the University.

## **Computer Works**

(18) The University owns the copyright in computer works developed by a staff member within the course of their duties other than those in the public domain. It may upon request and on such terms as the University may reasonably determine agree to assign the rights in a computer work to the staff member for purposes of attracting research or other funding, but will retain a licence to use the computer works for University purposes.

# **Section 5 - Ownership of Intellectual Property Created by Staff Members Outside the Course of Their Duties**

(19) If a staff member has created intellectual property outside the course of their duties at the University and without using any significant level of University resources (including physical, infrastructure, equipment, technical support and administrative, financial, human and legal resources), then the University does not own such intellectual property.

# **Section 6 - Ownership of Intellectual Property Created by Students**

(20) Students will generally own the intellectual property created in the course of their studies except as follows:

- a. The University will own intellectual property arising from participation by a student in a University project and the student will be required to enter into an agreement with the University in respect of the intellectual property generated as a result of the University project.
- b. If the University believes that the University project in 20(a) or any other student project may have the potential for commercial development, it may require the student to enter into an Intellectual Property Agreement in respect of the particular University project and the purpose of that Intellectual Property Agreement would be to provide protection for the student's intellectual property rights in that University project.
- c. A student who is required to enter into an agreement under Clause 20 (a) or (b) of this policy will be advised to seek independent legal advice.
- d. In the event that the student assigns intellectual property rights in a University project to the University, the student will have the same rights and benefits as a staff member under this policy and the [Intellectual Property Procedure](#) in relation to that assignment.

(21) The University will own intellectual property arising from the work of a student undertaken with a specific contribution by the University. A specific contribution means funding, resources, facilities or apparatus contributed by the University (beyond that which is ordinarily contributed) but excludes a scholarship awarded by the University as a contribution to a specific University project.

(22) Where a student generates intellectual property, the student and supervisor will consult to ensure the appropriate recognition of any verifiable contributions by the supervisor or any other person in relation to the generation of the intellectual property.

(23) The copyright in a student's thesis is owned by the student unless the student agrees otherwise in writing except that, subject to any confidentiality requirements, the University reserves the right to lodge a copy of any student's thesis in a University library or University digital thesis database.

(24) Student Participation in University Projects

- a. Where a student participates in a University project, the student will be subject to the provisions of this policy as if the student is a staff member.
- b. Where a student participates in a University project, the University will support the student in accordance with the provisions of the [Intellectual Property Procedure](#).

## **Section 7 - Ownership of Intellectual Property by Visitors and Conjoint Appointments to the University**

(25) The University makes no claim to ownership of intellectual property created by a visitor to the University or conjoint appointee to the University except where the visitor or conjoint appointee is involved in a University project or uses University IP, in which case an agreement will be required before the University project or the use of the University IP commences.

## **Section 8 - Bringing Intellectual Property to the University**

(26) The University may require a staff member or student who brings intellectual property to the University to provide documentation in relation to the intellectual property.

## **Section 9 - Dealing with a Copyright Work when a Staff Member Ceases University Employment**

(27) The University requires a staff member who is leaving the University and who has in the course of their duties created a copyright work owned by the University, to do all things necessary to ensure that the University's IP in the copyright work is protected.

## **Section 10 - Moral Rights**

(28) The [Copyright Act 1968](#) (C'th) protects the moral rights of creators of works by acknowledging a right of attribution of authorship, a right not to have authorship falsely attributed and a right of integrity of authorship. The University will observe the rights provided for in the Copyright Act, including moral rights, and will require staff members and students to observe those rights.

## **Section 11 - Cultural Property Rights of Indigenous Peoples**

(29) In addition to the rights in Clause 16 the University acknowledges that the cultural property rights of Indigenous peoples in relation to knowledge, ideas, cultural expressions and cultural materials must be respected and will be taken into account in any dealings with intellectual property under this policy.

## **Section 12 - Registration of University IP**

(30) The University will maintain an Intellectual Property Register which will be reported annually to the University Council.

(31) University IP that may be capable of commercialisation must be identified to the Deputy Vice-Chancellor (Research and Innovation) for inclusion in the University's Intellectual Property Register.

(32) The Deputy Vice-Chancellor (Research and Innovation) must be notified within one month of the identification or creation of any IP which is or may be capable of commercialisation ('Notification IP').

(33) Where there is any doubt about whether University intellectual property is Notification IP, it is the responsibility of the originator(s) to seek clarification from the Deputy Vice-Chancellor (Research and Innovation).

(34) The originator(s) of the University IP will uphold confidentiality by ensuring that details of the University IP are not conveyed prior to registration to any person external to the University, including through discussions, conferences, publications or in theses, except where:

- a. required to under a funding agreement or University project agreement; or
- b. in relation to theses, there is a confidentiality agreement in accordance with the provisions of Clause 7 of the [Intellectual Property Procedure](#).

## **Section 13 - Commercialisation of University IP**

(35) When University IP is entered on the Intellectual Property Register, the Deputy Vice-Chancellor (Research and

Innovation) will determine, in accordance with the University's [risk management framework](#), whether the University wishes to commercialise the University IP. Commercialisation decisions will be made on the basis of appropriate legal, financial and commercial advice.

(36) During the determination period the Deputy Vice-Chancellor (Research and Innovation) and originator(s) will ensure that the University IP is treated as confidential. The determination period is eight weeks from the entry of the University IP on the University's Intellectual Property Register, during which the option of commercialisation of the University IP is assessed.

(37) Where a decision is not made about the commercialisation of the University IP within the determination period, or where it is determined that the University does not wish to commercialise the University IP, the ownership of the University IP will be assigned in writing by the Deputy Vice-Chancellor (Research and Innovation) to the originator(s).

## **Section 14 - Role of TUNRA**

(38) The University of Newcastle Research Associates Limited (TUNRA), a subsidiary company of the University, will have the first right of refusal in relation to proposed commercialisation of University IP, subject to the provisions of this policy.

## **Section 15 - Apportionment of Net Revenue from Commercialisation of University Intellectual Property**

(39) Where the University decides to commercialise University IP, it will share the net returns from the commercialisation with the originator(s) in accordance with the provisions Clause 18 of the [Intellectual Property Procedure](#). Net returns are returns after deduction of all direct University costs in the creation, development and protection of the University IP.

## **Section 16 - Advising Staff Members and Students of Their Rights and Obligations**

(40) The University will take all reasonable steps to ensure that the provisions of the Intellectual Property Policy and [Intellectual Property Procedure](#) are made known to staff and students.

(41) In any dealings involving students and their intellectual property rights, the University will assist students to protect their intellectual property rights.

## **Section 17 - Intellectual Property Agreements**

(42) The University may enter into agreements concerning intellectual property rights and ownership, including agreements to assign ownership of intellectual property, which will override the provisions of this policy and the [Intellectual Property Procedure](#). This includes agreements with external parties and agreements with staff member(s) and/or student(s).

(43) If the University wishes to enter into an agreement with an external party concerning the funding and ownership of intellectual property produced in the course of a University project, the University will, as far as is practicable,

consult with the staff member(s) and student(s) who will be affected by the agreement.

(44) A staff member(s) or student(s) may, with the approval of the University, enter into an agreement with an external funding body with provision for the assignment of ownership of intellectual property produced in the course of the funded work. Such an agreement will override the provisions of this policy and [Intellectual Property Procedure](#).

(45) Where an agreement concerning intellectual property contains a confidentiality provision, the University will require any staff member(s) or student(s) involved in activities covered by that agreement to sign a licence or confidentiality agreement, as the University may determine.

## **Section 18 - Assignment of University IP**

(46) University IP may only be assigned to the originator(s) with the written approval of the Deputy Vice-Chancellor (Research and Innovation).

(47) In accordance with the provisions of the [Intellectual Property Procedure](#), the Deputy Vice-Chancellor (Research and Innovation) may impose conditions on the assignment of University IP and will reserve the right to require a royalty-free, world-wide licence to the University for use for its purposes.

## **Section 19 - Protection of University IP**

(48) A staff member or student will not take any action which is inconsistent with the University's rights under this policy.

(49) A staff member or student who uses University IP contrary to this policy or without proper authorisation may, if the Deputy Vice-Chancellor (Research and Innovation) determines, be subject to a referral for action under the relevant Workplace Agreement or [Student Conduct Rule](#).

## **Section 20 - Implementation, Interpretation and Authorisation**

(50) The Deputy Vice-Chancellor (Research and Innovation) is responsible for the implementation of this policy, the management of University IP and for providing assistance on the interpretation of this policy.

(51) The Deputy Vice-Chancellor (Research and Innovation) will nominate a staff member in each College or Division from whom advice may be sought about the operation of this policy and the [Intellectual Property Procedure](#).

(52) The only authorised signatories on behalf of the University on matters relating to intellectual property are the Vice-Chancellor and the Deputy Vice-Chancellor (Research and Innovation).

## **Section 21 - Dispute Resolution**

(53) A dispute arising from the interpretation or operation of this policy will be dealt with in accordance with the University's [Complaint Management Policy](#) as detailed in the [Intellectual Property Procedure](#).

## **Section 22 - Review**

(54) This policy will be reviewed every three years by the Deputy Vice-Chancellor (Research and Innovation).

## **Section 23 - Relaxing Provision**

(55) The Vice-Chancellor or Deputy Vice-Chancellor (Research and Innovation) may relax any provision of this policy.

## Status and Details

<b>Status</b>	Historic
<b>Effective Date</b>	23rd August 2011
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<b>Responsible Executive</b>	Juanita Todd Deputy Vice-Chancellor (Research and Innovation)
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## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Academic staff"** - A person employed as an academic staff member or appointed as an academic honorary appointee (including adjunct, clinical conjoint, visiting, honorary and conjoint appointments), but does not include persons who are employed solely as teachers or professional staff.

**"Asset"** - Any tangible or intangible item (or group of items) that the University owns or has a legal or other right to control and exploit to obtain financial or other economic benefits.

**"Award"** - When referring to a University qualification, this term means an academic qualification approved by Academic Senate that is conferred when a student has met the relevant program requirements. For all other uses of this term, the generic definition applies.

**"Law"** - All applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity.

**"Student"** - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

**"External parties"** - Any individual or organisation external to the University.

**"Intellectual property"** - Intellectual property (IP), as defined by the World Intellectual Property Organisation, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications; and Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

**"Program"** - When referring to learning, a program is a sequence of approved learning, usually leading to an Award. For all other uses of this term, the generic definition applies.

**"School"** - An organisational unit forming part of a College or Division, responsible for offering a particular course.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

**"Supervisor"** - Staff members with direct supervisory responsibility for other staff within the workplace (a Supervisor may also be member of Senior Management, with duties as an Officer as defined in the Work Health and Safety Act 2011, or any replacing legislation).

**"Term"** - When referring to an academic period, term means a period of time aligned to an academic year for the delivery of a course in which students enrol and for which they are usually charged fees for example semesters, trimesters, summer, winter or full-year term. The academic year for a term is determined by the academic year in which the course commences, not concludes. For all other uses of this term, the generic definition applies.

**"College"** - An organisational unit established within the University by the Council.

**"Learning Management System"** - The web-based system used to help facilitate online interactions between staff and students in their learning and teaching activities.