

Intellectual Property Policy

Abstract

The University of Technology, Sydney is committed to creating an environment where scholarship, research, academic excellence and innovation can flourish. As a part of this commitment, this IP policy is formulated to provide guidance on the requirements and practices of the University with respect to Intellectual Property for staff, other appointees and students.

Dates	Policy or amendment approved 17/06/2009 Policy or amendment takes effect 17/06/2009 Policy is due for review (up to 5 years) 06/2014
Approved by	Authorising body: Council Meeting number/date: 09/3, Wednesday 17 June 2009 Resolution number: COU/09-3/55
Implementation Officer	Director, Research Innovation Office
Relevant to	All staff and all students
Related documents	Australian Code for the Responsible Conduct of Research (PDF) National Principles of Intellectual Property Management for Publicly Funded Research (PDF) UTS related documents: Student and Related Rules Council's Directives for UTS Commercial Activities Staff Code of Conduct Enterprise Agreement Vice-Chancellor's Directive for Research-Generated Intellectual Property and Commercialisation [under review] Outside Work Policy Policy on Handling Staff Grievance Supervisor Guidelines on Handling Staff Grievances Policy on Handling Student Complaints Procedures for Managers Handling Student Complaints UTS Standing Delegations

Legislation	Copyright Amendment (Moral Rights) Act 2000 (Cwlth) Copyright Act 1968 (Cwlth) Trade Marks Act 1995 (Cwlth) Patents Act 1990 (Cwlth) Designs Act 2003 (Cwlth) Circuit Layouts Act 1989 (Cwlth) Plant Breeder's Rights Act 1994 (Cwlth)
File number	UR06/482
Superseded documents	Intellectual Property Policy 2006
Review notes	Vice-Chancellor's Directive for Commercialisation of Course and Educational Materials (under development)

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1. Purpose

The objectives of this Policy are:

- To create an innovative culture which fosters the creation of Intellectual Property and provides a framework for considering its commercial potential
- To ensure University Intellectual Property is identified and managed appropriately within the University of Technology, Sydney management framework
- To provide a clear understanding of the rights and responsibilities of staff, other appointees and students and to protect the interests of the University and its members
- To provide guidance on managing jointly-owned Intellectual Property whether it be between the University and another institution, individual or funding body
- To provide guidance on the circumstances in which the University will waive its rights to its Intellectual Property or share the benefits of the ownership of this Intellectual Property with staff, students and other persons who may be brought within its ambit from time to time
- To outline the general framework for the distribution of any income arising from commercialisation, and
- To allow the University to comply with [National Principles of Intellectual Property Management for Publicly Funded Research](#) (PDF) the [Australian Code for the Responsible Conduct of Research](#) (PDF) and other national policies as promulgated from time to time.

2. Scope

This policy applies to all full-time and part-time staff, including casual employees, and other appointees, including emeritus professors, adjunct, visiting and honorary appointees, and to all students. The policy applies to consultants, conjoint appointees, and other persons generating Intellectual Property in collaboration with University staff or students, or engaged by the University to undertake a specific activity, and it may also apply from time to time to other persons by agreement.

3. Definitions

3.1 Intellectual property

Intellectual Property means all statutory and other property rights (including rights to require information to be kept confidential) protected by Australian law and international agreements applying to Australia as amended from time to time.

For the avoidance of doubt these include:

3.1.1 Statutory intellectual property

- Patents Act 1990 (Cwlth), which deals with patents granted for inventions
- Copyright Act 1968 (Cwlth), which deals with copyright in literary works (including computer programs), dramatic works, musical works, artistic works (including architectural drawings), films, sound recordings, broadcasts, published editions and certain types of performances. In addition the Copyright Act confers moral rights on creators of certain works and other subject matters and creates a range of rights over the distribution of information in electronic form
- Plant Breeders' Rights Act 1994 (Cwlth), which deals with new plant varieties
- Designs Act 2003 (Cwlth), which deals with design features of products
- Trade Marks Act 1995 (Cwlth), which deals with trade marks, and
- Circuit Layouts Act 1989 (Cwlth), which deals with circuit layouts.

3.1.2 Confidential information and trade secrets

The general law protects confidential information and trade secrets. This includes but is not limited to:

- an invention or discovery, before the filing of a patent application
- the contents of a patent application up to the time that a patent is granted
- new commercial valuable knowledge which is intentionally omitted from a patent application, and never becomes protected by the grant of a patent, for example, to minimise the prospect of reverse engineering
- research materials, including biological materials, and data
- commercially sensitive information such as confidential reports
- information marked confidential, and
- trade secrets.

3.1.3 Reputation

The general law also protects reputation, including unregistered trade marks through an action for passing off and action under Section 52 of the Trade Practices Act or equivalent provisions of state fair trading legislation.

3.2 Biological Material means all biological material including molecules, compounds, reagents, cell lines, antibodies, viruses, proteins, peptides, enzymes, clones, etc.

3.3 Commercialise/Commercialisation in relation to Intellectual Property means to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise or otherwise utilise the Intellectual Property for the purpose of generating financial or other commercial gains and commercialisable shall be similarly construed. The use of course and educational materials by the University for the purposes of teaching and research in its programs, whether in Australia or overseas, does not constitute commercialisation of the Intellectual Property.

Commercialisation Revenues means revenue, net of costs, available for distribution to inventors, and may include:

- royalties upon sales by a licensee
- royalties from sub-licence fees received from a licensee
- lump sum licence fees
- proceeds of assignment or sale of the Intellectual Property (where a sale occurs)
- signing fees
- milestone payments
- minimum annual payments
- patent prosecution and maintenance expenses which are reimbursed to UTS
- dividends upon shares owned by the University in a start up company to which it grants a licence
- net proceeds of sale of shares owned by the University in a start up company to which it grants a licence, and
- damages from infringement proceedings.

3.4 Commissioned Work means a specific work which the University has directed or requested a Staff Member to create by means of an agreement or arrangement signed by a Dean or a Director, and includes a work written or otherwise created where the Staff Member is remunerated over and above the Staff Member's usual salary.

3.5 Confidential Information is commercially sensitive, or by its subject matter or nature confidential. It includes all the research and scientific information with which a Commercialisation Project is concerned.

3.6 Copyright means all rights conferred by the Copyright Act 1968 (Cwlth) as amended or substituted in relation to, without limitation, literary works, dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances.

3.7 Course and educational materials, when not Commissioned Works, means materials used in or in connection with an education course for the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, assessments, practicum and other teaching activities conducted by the University, and includes without limitation overhead transparencies, slides, photographs, maps, diagrams, books and handbooks, manuals, teaching aids, course outlines, exercises, computer programs and multimedia works that serve a teaching function. 'Course and educational materials' excludes subject and course design and the related documentation.

3.8 Creative works mean all copyright works that are artistic in character, including artistic literary works, dramatic works, musical works, films, sound recordings, broadcasts, published editions and certain types of performances.

Creator/Inventor means the Staff Members and/or Students responsible for creating, inventing or developing the Intellectual Property.

3.9 Design means a design as defined by the Designs Act 2003 (Cwlth).

3.10 Materials mean unique materials that are the subject of Intellectual Property including data; biological materials, including such things as cell lines, reagents, viruses, monoclonal antibodies etc. and new physical sciences materials such as new ceramics, powders, formulations, etc.

3.11 Moral Rights has the meaning ascribed to that term in the Copyright Act 1968 (Cwlth) [as amended by the Copyright Amendment (Moral Rights) Act 2000 (Cwlth)] and recognises three types of moral rights: the right of attribution of authorship; the right not to have authorship falsely attributed and the right of integrity of authorship.

3.12 Publication means research outputs, including:

- books and book chapters
- publications in academic, professional or other journals
- conference presentations
- technical and other reports
- monographs
- abstracts
- poster presentations
- electronic and online publications
- software
- creative works and designs, and
- exhibitions or performances.

3.13 Research Project means a project that has investigation as a primary objective and has the potential to contribute new knowledge, both theoretical and practical, and includes projects undertaken by students, under the supervision of staff members, as part of a research degree program.

3.14 Scholarly Work means copyright material which is the output of academic staff members, including research, creative and other outputs in area(s) of a staff member's expertise. It does not include course and educational materials.

3.15 University means University of Technology, Sydney.

4. Policy principles

In promoting, protecting, managing and commercialising Intellectual Property, the University does so for the benefit of the community and the University, including its staff and students.

5. Intellectual Property Policy statements

5.1 Ownership of Intellectual Property

5.1.1. Intellectual Property created by Staff Members

Unless otherwise agreed the University asserts ownership of all Intellectual Property created or developed by a staff member in the course of his/her employment, except where specifically excepted by this policy.

5.1.2 Intellectual Property created by emeritus professors, visiting, adjunct and conjoint appointees

The University asserts ownership of all Intellectual Property created by emeritus professors, visiting, adjunct, honorary and conjoint appointees where:

- the Intellectual Property is created with substantial contribution or use of University resources
- the Intellectual Property generated has resulted from the use of pre-existing Intellectual Property owned by the University
- the Intellectual Property belongs to a set of Intellectual Property generated by a team of which this person is a member and other members are University employees, and/or
- the Intellectual Property has been granted to the University and/or generated as a result of funding provided or obtained by the University.

5.1.3 Course and educational materials, and creative and scholarly works created by staff members not specifically commissioned or otherwise created pursuant to an agreement

The University asserts its ownership of course and educational materials and creative and scholarly works created or developed for specific purposes including, but not limited to University of Technology, Sydney offshore activities, translations of materials, and/or with substantial contribution or use of University resources.

The University does not assert ownership of the Intellectual Property in course and educational materials or creative or scholarly works created or developed by a staff member while employed at the University, except where these have been developed for specific purposes, subject at all times to the University reserving to itself a non-exclusive, royalty free, perpetual, irrevocable world-wide licence (including the right to sub-license) to use, reproduce, adapt, exploit, distribute, broadcast or perform the materials or works for the purposes of the University, within Australia and elsewhere, whether or not the staff member remains an employee of the University.

Under this Policy, the University also asserts the right to retain a copy of any such materials or works for its own use and to meet record-keeping requirements.

Staff members must provide copies of such course and educational materials if requested to do so by their supervisor, Head of School or Department, Dean, a member of the Senior Executive of the University, or the Vice-Chancellor. The University's licence over the materials and works is subject to any moral rights (see Section 5.4 of this Policy).

5.1.4 Commissioned Works

The University will own all Intellectual Property that it has commissioned a staff member and/or other appointee to create or develop for University purposes. A commission will be evident if an arrangement or agreement has been signed by a Dean or Director and it may (or may not) include provision for a financial benefit or non-financial benefit to the staff member, and/or a period of release from teaching duties, or a lighter teaching load during a period.

Where the commissioned work uses, adapts or includes existing course and education materials or scholarly or creative materials, the staff member or other appointee will have the right to use those course and educational materials and creative and scholarly works, subject to the University's Outside Work Policy and the University's licence as set out in 5.1.3 of this Policy.

5.1.5 Pre-existing Intellectual Property

Upon commencing employment staff members and other appointees are to declare existing Intellectual Property they wish to exclude from the policy due to creation prior to the staff member's employment with the University.

5.1.6 Intellectual Property created by students

Students own the copyright in their theses.

The Rules of the University require, as a condition of candidature, that the University reserves the right, and under this Policy asserts that right, to retain the original or copy of any drawings, models, designs, plans and specifications, essays, theses or other work executed by a student as part of his/her course, or submitted for any award or competition conducted by the University. Such retention is not to affect any copyright or other Intellectual Property right that may exist in such student work (refer [Rule 3.9.1](#) of the Student and Related Rules).

In cases where the University exercises, or wishes to exercise, its right under [Rules 3.9.2\(2\) and 3.9.2\(8\)](#), the students shall grant the University a non-exclusive, royalty free, perpetual, irrevocable, world-wide licence (including the right to sub-license) to make available for consultation, loan, or copying, at the discretion of the University Librarian subject to the Rules, any copy of a thesis deposited with the University Library in accordance with Rules [11.19](#) or [12.7](#), subject to any pre-existing lawful confidentiality agreement.

The University will not generally claim ownership of Intellectual Property created by students except in the circumstances described below. The Vice-Chancellor will issue Directives for the key administrative decisions and processes for commercialisation of Intellectual Property consistent with this Policy, [Council's Directives for UTS Commercial Activities](#) and [UTS Standing Delegations](#).

Where a student's supervisor makes a contribution to the creation of Intellectual Property the Intellectual Property will be owned jointly by the student and the University.

The University asserts ownership of Intellectual Property created by students where:

- the student participates in a research team whose members include staff members
- the Intellectual Property has been created with substantial contribution or use of University resources
- the Intellectual Property has been created as the result of pre-existing Intellectual Property owned by the University
- the Intellectual Property has been created as a result of funding provided or obtained by the University.

If a student participates in creating Intellectual Property owned by the University:

- the student will share in net commercialisation revenues, if any, with all other creators/inventors according to University policies
- the student will retain copyright in any thesis written by them subject to the operation of [Rule 3.9](#) of the Student and Related Rules, and
- the student must not be impeded in submitting a thesis for examination and completing requirements for the award of a degree or other relevant award.

5.2 Commercialisation by the University

5.2.1 Identification and protection of Intellectual Property

Staff members, other appointees and students must identify and disclose in writing to the Deputy Vice-Chancellor (Research) or nominee any Intellectual Property which has been created in the course of his/her employment, appointment or studies prior to public disclosure, including all relevant details of that Intellectual Property. Staff members, other appointees and students must not apply for registration of, or rights associated with, Intellectual Property in their own name unless by agreement with the University following full disclosure.

5.2.2 Commercialisation by the University

The University will use reasonable endeavours to commercialise Intellectual Property that is considered suitable for commercialisation. The process of commercialisation will be undertaken in collaboration with the creators/inventors and in accordance with the University's policies. It will be the University's decision whether to proceed with, continue, or exit from commercialisation activities.

The [Vice-Chancellor's Directive](#) sets out the key administrative decisions and processes for commercialisation of Intellectual Property consistent with this Policy, [Council's Directives for UTS Commercial Activities](#) and [UTS Standing Delegations](#).

5.2.3 Distribution of net commercialisation revenues

If the University commercialises any Intellectual Property, it will distribute a share of net commercialisation revenues to creators/inventors that have a recognised interest in the Intellectual Property that has earned that revenue.

Net commercialisation revenues will be distributed in the following manner:

- one-third to be shared among all the creators/inventors (staff members, other appointees and/or students)
- one-third to the creator's/inventor's faculty or institute (distributed pro rata to two or more faculties or institutes as the case may be) for use as the dean of the faculty or director of the institute determines following consultation with staff and in line with the strategic objectives of the faculty or institute, but with the expectation that it will be used to foster research, and
- one-third to the University for its general purposes, with the expectation that it will be used to foster research.

The mechanisms used to implement these principles are set out in the [Vice-Chancellor's Directive](#).

5.2.4 Commercialisation by creators/inventors

If the University decides not to commercialise any particular Intellectual Property, the University will negotiate with the creators/inventors:

- for the licensing or assignment of the Intellectual Property by the University to the creators/inventors, and
- in respect to any commercialisation revenues received by the creator/inventor, the payment to the University of a share of those revenues to compensate the University for the use of or contribution of its facilities and resources.

5.2.5 Restrictions on Commercialisation

The University reserves the right and under the Policy asserts that right to prohibit the commercialisation by creators/inventors of Intellectual Property which, in the

reasonable judgement of the University, is incompatible with the best interests of the University.

5.3 Managing publication and commercialisation objectives

The University encourages its researchers and students to publish their research outcomes.

The University also has the objective of commercialisation which may sometimes require certain Intellectual Property to be kept and maintained in confidence, so as not to adversely affect its commercialisation prospects.

The objective to commercialise Intellectual Property is not to operate to the exclusion of the objective to publish and the two objectives need to be reconciled and accommodated.

Where both the University's publication and commercialisation objectives coincide, publications will proceed, in a managed way that allows both the objective of publication to be achieved and the objective of commercialisation to be realised.

The procedures involved in the management of publication and commercialisation objectives are set out in the [Vice-Chancellor's Directive](#).

5.4 Moral rights

The University of Technology Sydney acknowledges the moral rights of its staff and students as prescribed by the [Copyright Act 1968 \(Cwlth\)](#) namely the right of attribution, the right not to have authorship falsely attributed and the right of integrity, applying in respect of certain copyright subject matter.

5.5 Disputes

Where a dispute arises between the University and a creator/inventor or student about the ownership of Intellectual Property, parties will attempt to resolve the matter in accordance with the [Australian Code for the Responsible Conduct of Research](#) (PDF) and the following UTS policies, guidelines and procedures:

- [Enterprise Agreements](#) (section on General Industrial Grievance)
- [Policy on Handling Staff Grievances](#)
- [Supervisor Guidelines on Handling Staff Grievances](#)
- [Policy on Handling Student Complaints](#), and
- [Procedures for Managers Handling Student Complaints](#).

In the first instance, parties should seek to resolve a dispute at the lowest possible level in accordance with principles set out in the above documents. This may include using avenues such as mediation.

If the dispute is not resolved within a reasonable timeframe by mediation, then it should be submitted to expedited arbitration administered by and in accordance with the arbitration rules of the Australian Commercial Disputes Centre or similar body. Failing agreement about the arbitrator, the Australian Commercial Disputes Centre would, after consultation and with the agreement of all parties concerned, appoint a person who is not the same person as the mediator. A report detailing the findings of the proceedings will be provided to all parties concerned.

6. Roles and responsibilities

The Vice-Chancellor has overall accountability for the enforcement of the policy.

Accountable Officer: The Deputy Vice-Chancellor (Research) is responsible for the Policy in relation to all Intellectual Property other than Course and Educational Materials. The Deputy Vice-Chancellor (Teaching, Learning and Equity) is responsible for the Policy in relation to Course and Educational Materials.

Implementation includes providing education to the University community about the operation of the policy.

Implementation Officer: Director, Research Innovation Office.

The Deputy Vice-Chancellor (Research) or nominee, or Deputy Vice-Chancellor (Teaching, Learning and Equity) or nominee, as appropriate, are responsible for authorising corrective action to rectify breaches of the policy and must report any activities that may involve corrupt conduct, maladministration or serious and substantial waste of public funds to the Vice-Chancellor or the Director, Internal Audit as appropriate.

Breaches of the policy will be dealt with in accordance with the relevant Enterprise Agreement, the Rules of the University relating to staff discipline and the Code of Conduct.

7. Version control and change history

Date	Version	Approved by, resolution no.	Amendment
16/08/04	2	COU/04/105	The paragraph, 'Further Action', was added
15/08/07	3	COU/07-4/80	Update, reformat and HEWRR compliance
06/09	4	COU/09-3/55	Updated for the Australian Code for the Responsible Conduct of Research (2007); arrangements with Uniquist and emeritus appointments