

Replaces (please remove) Section 7.9.1 Issued 05/00

7.9.1 INTELLECTUAL PROPERTY POLICY

Approved by Council 27 May 1996.

1. Statement of Principles

- (1) This policy seeks to encourage an environment in which teaching, learning and research will flourish. The University adheres to the principle that knowledge and ideas should be made available within the public domain for the benefit of the entire community. Where this principle conflicts with commercial considerations, the University will resolve the conflict to ensure publication without undue delay, having regard to the wishes of the originator.
- (2) This policy seeks to protect and respect the moral rights of originators of intellectual property. The University recognises the right of originators to participate in decisions regarding the commercialisation and use of intellectual property created by them.
- (3) This policy seeks to facilitate, where appropriate, the commercialisation of intellectual property created by the University's staff and students. The University recognises that originators are entitled to an equitable share of any financial returns from such commercialisation. The University, as employer of staff engaged in research and as a facilitator of research, is also entitled to an equitable share.

2. Definitions

For the purposes of this policy:

- "External Study Materials" includes any material that a staff member supplies to the University for the purposes of publication by USQ as part of external study packages;
- "intellectual property" includes, but is not limited to, any proprietary right which arises under, or is capable of being obtained under, legislation relating to copyright, patents, designs, trade marks, circuit layouts or plant varieties;
- "Intellectual Property Officer" means a person appointed by the Vice-Chancellor to assume responsibility for decisions relating to the commercialisation of intellectual property¹; and
- "originator" includes an author, creator or inventor.
- "Intellectual Property Committee" is defined at Clause 11.
- "professional purposes" includes use for commercial gain as part of a professional service offered by the originator or the University.
- "organisational unit" refers to the budgetary or academic organisational unit in the University within which a work is created. It may include faculties, departments, centres and administrative units.

3. Ownership

- (1) The University may claim ownership of all intellectual property, not being copyright, created by academic or general staff in the course of their employment with the University. If the University does not claim ownership then the ownership rests with the originator.
- (2)
 - (a) Ownership of Copyright in any materials produced by an employee of the University shall rest in the employee except where otherwise stated in the Contract of Employment of the employee.
 - (b) Notwithstanding anything else within the Contract of Employment, the Contract of Employment shall require the employee unconditionally to assign the copyright to the University on all external study material produced by the employee whilst employed by the University. This requirement shall be part of the Contract of Employment of each employee

¹ Currently the Legal Officer

whether explicitly stated or otherwise and, for employees contracted prior to the adoption of this Policy, represents a continuation of the traditional requirement of the University.

- (c) Where copyright rests in the University, the originator may require The University to use its best endeavours legally to protect the copyright and, failing which, the copyright shall be reassigned to the originator.
 - (d) Where copyright rests in the University, the University shall not assign the copyright to a third party without the consent of the originator.
- (3) The University makes no claim to automatic ownership of intellectual property created independently by students who are not employees of the University.
- (4) # In individual cases, a student may be required to enter into an agreement which permits the University to obtain the rights to intellectual property (other than copyright) created in the course of the student's study or research. Such an agreement shall, wherever possible:
- (a) be made prior to the student commencing the study or research;
 - (b) be explained to the student; and
 - (c) treat the student no less favourably than originators who are employed by the University.
- (5) In accordance with 3 (1) above, where the University claims ownership of intellectual property created by an originator, the University shall assign or relinquish its rights to the originator if:
- (a) the Intellectual Property Officer decides that the University does not intend to become involved in the commercial exploitation of the intellectual property;
 - (b) the Intellectual Property Officer fails to make a decision on the University's involvement in commercial exploitation, as required by clause 6 (2);
 - (c) the University fails, within 6 months of a decision by the Intellectual Property Officer that it intends to become involved in commercial exploitation, to commence any steps necessary so to do; or
 - (d) after the commencement of steps referred to in 3 (5) (c) above the University fails to continue its best endeavours to progress the commercial exploitation in a timely manner.

4. Use by Non-Owners

- (1) Where the University is the owner of intellectual property created by an originator, the University agrees to grant the originator a non-exclusive and irrevocable licence to use the intellectual property for teaching, research or professional purposes.
- (2) Where an originator is the owner of intellectual property created in the course of employment with the University, the originator agrees to grant the University a non-exclusive and irrevocable licence to use the intellectual property for teaching, research or professional purposes. If the University obtains any financial return from such use, it shall be distributed in accordance with the provisions of clause 7.

5. Moral Rights

- (1) The University shall take reasonable steps to respect the right of an originator to be acknowledged as the creator of intellectual property, and to endeavour to ensure that others respect that right.
- (2) Where the University uses intellectual property created by an originator it shall take reasonable steps to consult with the originator before modifying or adapting that intellectual property, except in the case of external teaching materials in which it is the owner of the copyright. In such case the University may

THE FOLLOWING PARAGRAPH FURTHER CLARIFIES THE UNIVERSITY'S OBLIGATIONS WHERE INTELLECTUAL PROPERTY IS GENERATED IN WHOLE OR IN PART BY A STUDENT ENROLLED AT THE UNIVERSITY.

IT IS RECOGNISED THAT WHERE NO EMPLOYMENT ARRANGEMENT EXISTS BETWEEN A STUDENT AND THE UNIVERSITY, THE UNIVERSITY HAS NO RIGHTS OVER THE STUDENT'S INDEPENDENT GENERATION OF INTELLECTUAL PROPERTY. IF, HOWEVER, INTELLECTUAL PROPERTY LIKELY TO HAVE A COMMERCIAL BENEFIT IS IDENTIFIED AS ARISING FROM THE STUDENT'S RESEARCH PROJECT, AND/OR IF THE STUDENT IS LIKELY TO BE PARTY TO INTELLECTUAL PROPERTY ARISING OUT OF A STAFF MEMBER'S WORK, THE UNIVERSITY MAY REQUIRE THE STUDENT TO SIGN A STUDENT PROJECT PARTICIPATION AGREEMENT (A DOCUMENT DEFINING THE DIVISION OF RIGHTS BETWEEN THE UNIVERSITY, THE STUDENT AND ANY OTHER PARTY) AS PART OF THE APPROVAL OF THEIR RESEARCH PROJECT (BUT NOT THEIR REGISTRATION IN THE HIGHER DEGREE).

modify or adapt the materials at its sole discretion for the purpose of producing modified or adapted external teaching materials.

- (3) Where an originator wishes not to be acknowledged as the creator of intellectual property which has been modified or adapted, the University shall take reasonable steps to respect that wish, and to endeavour to ensure that others respect it.

6. Decisions as to Commercial Exploitation

- (1) Where originators create intellectual property not being copyright which they believe to be capable of commercial exploitation, they shall report its existence to the Intellectual Property Officer as soon as possible.
- (2)
 - (a) Once the Intellectual Property Officer becomes aware (whether by notification or otherwise) of intellectual property which may be capable of commercial exploitation, the Intellectual Property Officer shall decide within eight weeks whether or not the University wishes to become involved in the process of commercial exploitation.
 - (b) In making such a decision, the Intellectual Property Officer shall consult with the originator and any other relevant parties.
- (3) If the Intellectual Property Officer and/or the originator(s) believe(s) that the confidentiality of certain information must be maintained in order for intellectual property to be protected or successfully exploited, the Intellectual Property Officer shall:
 - (a) consult with the originator and any other relevant parties; and
 - (b) determine a time when publication of the information may take place, taking into account the principle set out in clause 1(1).

7. Distribution of Financial Returns

- (1) Where the University derives any financial return from the commercial exploitation of intellectual property, it shall be distributed in accordance with the provisions set out in 7(2), unless otherwise specified in agreed contractual arrangement(s) specific to the commercialisation provided that the originator shall not be entitled to any return in relation to copyright material when used as external study material for USQ students.
- (2) After deducting all reasonable costs of protecting, marketing and administering the intellectual property, net revenues received by the University shall be distributed as follows:
 - (i) 60% to the originator
 - (ii) 20% to the University
 - (iii) 20% to the organisational unit within the University, nominated by the originator
- (3) Where more than one originator is involved, the originators shall determine how the originators' share of annual net revenue shall be divided between them, and inform the Intellectual Property Officer of their decision.

8. Agreements with Third Parties

- (1) The University may enter with another party into an agreement which governs the ownership and exploitation of intellectual property. Where ownership of intellectual property does not rest with the University, the consent of the originator(s) shall be obtained before any such negotiation is entered into.
- (2) In negotiating such an agreement the University shall, as far as practicable, ensure:
 - (a) that the originators are consulted at all stages; and
 - (b) that the terms of the agreement are consistent with the principles set out in the other provisions of this policy.
- (3) Where such an agreement requires the originators to assign intellectual property to the University, or to some other person, the University shall, as far as practicable, ensure that the terms of the agreement are brought to the attention of those originators before they commence the work to which the agreement refers.

9. Dispute Resolution

- (1) If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy relies, the Intellectual Property Committee shall appoint a mediator to assist the parties in resolving their dispute.

(2)

If such a dispute cannot be resolved through the assistance of a mediator, an arbitrator shall be chosen by agreement between the parties. Should the parties fail to agree within 14 days an arbitrator shall be appointed by the President of the Institute of Arbitrators, Australia. The arbitrator agreed upon or appointed will investigate and decide the matters in dispute.

- (3) The arbitrator may adopt whatever procedure he or she deems appropriate, provided each party is given a fair hearing.
- (5) The decision of the arbitrator shall be reported to the Intellectual Property Committee without undue delay and the Intellectual Property Committee shall as soon as is practicable convey the decision to the parties to the dispute.

10. Information and Education

- (1) Upon adoption of this policy, the University shall take all reasonable steps to ensure that it is communicated and explained to staff and students.
- (2) The University shall establish, on an annual basis, an intellectual property education program with the following objectives:
 - (a) to alert new staff and students to their rights, responsibilities and opportunities in relation to intellectual property;
 - (b) to alert staff and students as to any changes to this policy; and
 - (c) to generate a better understanding of intellectual property issues in general, and so contribute to the creation within the University of a more co-operative and productive environment for teaching, learning and research.

11. Intellectual Property Committee

- (1) The Intellectual Property Committee shall have the following membership:
 - (a) the Deputy Vice-Chancellor (Research & Enterprise) as ex officio Chairperson
 - (b) the Intellectual Property Officer ;
 - (c) two persons appointed by the Vice-Chancellor;
 - (d) two members of staff nominated by the University branch of the NTEU;
 - (e) one member of the general staff nominated by the general staff unions; and
 - (f) one undergraduate and one postgraduate student nominated by the relevant student organisation(s).
- (2) The Terms of Reference of the Committee shall be to:
 - (a) oversee the implementation of this policy, especially the requirements regarding information and education as set out in clause **10**;
 - (b) assist in the resolution of disputes, pursuant to clause **9**;
 - (c) conduct a review of this policy at periodic intervals, or as circumstances demand, and make recommendations regarding appropriate changes; and
 - (d) provide advice to the Vice-Chancellor on intellectual property issues generally.
- (3) The Committee shall meet as required.

ATTACHMENT A

PROCESS FOR THE COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY

- 1 Under clause 6(1) of the Intellectual Property Policy an originator shall report the existence of intellectual property capable of commercial exploitation as soon as possible to the Intellectual Property Officer. The Intellectual Property Officer has eight weeks to decide on whether the USQ should become involved in commercial exploitation.
- 2 The Intellectual Property Officer shall consult, in relation to the property, with the originator, the appropriate Dean, the Head of Department (where applicable) and the Deputy Vice-Chancellor (Research and Enterprise).
 - 2.1 Relevant matters discussed with the creator will include:
 - why the inventor believes the University is to be notified;
 - the resources of the University which were used in the creation of the intellectual property;
 - relevant information about the intellectual property such as what it is, when it was produced, any commercial or humanitarian benefits perceived;
 - the roles the originator and the University will have in protecting and exploitation.
 - 2.2 The Intellectual Property Officer will then consult with the Dean, Head of Department and will prepare a brief for the Deputy Vice-Chancellor (Research and Enterprise) for consideration.
- 3 If the University decides to be active in the exploitation and protection of the intellectual property, an offer will be put to the creator regarding that involvement by the University. If the offer is accepted, written agreement will be entered into between USQ and the creator, or if not accepted, negotiations will take place to try to reach agreement between the parties.