

# Policy: Intellectual property

## Purpose

To promote the advancement and transmission of knowledge generated in connection with teaching or research within the University.

## Overview

The Intellectual Property (IP) Policy describes the principles of ownership, licensing, management, commercialisation and use of IP created by University staff, students, emeritus and honorary appointees, visitors and visiting fellows.

## Scope

This policy applies to all University staff, students, emeritus and honorary appointees, visitors and visiting fellows.

## Definitions

**Background confidential information** means any data or information which a staff student, emeritus or honorary appointee, visitor, or visiting fellow is legally obliged to treat as confidential, for example as a result of the terms and conditions of a previous employment contract or non-disclosure agreement.

**background intellectual property** means any IP owned by a staff, student, emeritus or honorary appointee, visitor, or visiting fellow, or licensed to them from a third party, which may be used while the staff, student, emeritus or honorary appointee, visitor, or visiting fellow has a connection with the University.

**Commercialise** means to exploit commercially and includes:

- a. in relation to an IP right; the exercise of all the rights exclusively granted to the holder of such IP rights by the laws of the jurisdiction in which the IP right subsists, including where permitted the right to sub-licence those rights;
- b. in relation to a product, kit, apparatus, substance, documentation or information resource (or any part of such materials): to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of it; and
- c. in relation to a method or process: to use the method or process or to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of a product,

kit or apparatus the use of which is proposed or intended to involve the exercise of the method or process.

**Commercialisation** – similarly defined to commercialise.

**Creative work** means an artistic, literary, musical, dramatic, film, sound or multimedia work, performance, diagram, map, chart, photograph or other creative work in which copyright subsists (irrespective of the medium in which the work is recorded).

**Creator** means any staff, student, emeritus or honorary appointee, visitor, or visiting fellow who contributes to the creation, development or invention of any IP whether or not in conjunction with other persons.

**Education material** means all materials produced by staff, students, emeritus and honorary appointees, visitors, and visiting fellows in the course of, or for use in, teaching at the University (for example, lecture notes and material, syllabi, handouts, study guides, course software and assessment materials) regardless of format (for example, printed, digital, electronic, multi-media presentations and web content), but excludes personal lecture notes that are not made available to students or personal notes taken by students to assist in study. To the extent a work may be both education materials and a Scholarly Work, it will be treated in this Policy as education materials.

**Emeritus professor** means any person conferred that title under the *ANU Academic Titles Conferral* policy.

**Honorary appointee** means any person conferred that title by under the *ANU Academic Titles Conferral* policy.

**Honorary status holder** means emeritus professor, honorary appointee, visiting fellow or visitor.

**Indigenous cultural and intellectual property rights** means Indigenous peoples' rights to their heritage, consisting of intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural identity, including as reflected in article 31 of the United Nations Declaration of the Rights of Indigenous Peoples.

**Intellectual property (IP)** means any and all industrial and intellectual property rights (whether or not registered or registrable or having to undergo any other process for grant, registration or the like) including rights in respect of:

- a. literary, artistic, musical and dramatic works in which copyright subsists (including future copyright);
- b. field and laboratory notebooks;

- c. cinematographic and multimedia works in which copyright subsists (including future copyright);
- d. performances of performing artists, sound recordings and broadcasts;
- e. patentable and non-patentable inventions (including granted patents and patent applications);
- f. registered and unregistered designs, plant varieties and topographies;
- g. circuit layouts and the like;
- h. registered and unregistered trademarks, trademark applications, service marks and commercial names and designations;
- i. databases, computer software and related material not otherwise coming within any of the other designated items of IP;
- j. scientific discoveries;
- k. confidential information, trade secrets and know-how and other proprietary information associated with any of the other designated items of intellectual property; and
- l. any other intellectual property rights as defined in Article 2 of the Convention (Dated 14<sup>th</sup> July 1967) establishing the World Intellectual Property Organisation (as amended from time to time).

**Moral rights** has the meaning set out in the *Copyright Act 1968 (Cth)*.

**Scholarly works** means copyright works that are intended for academic publication (for example, any article, book, manuscript, or manual) and have been peer reviewed, regardless of format (for example, printed, digital or electronic versions) created by staff, students, emeritus or honorary appointee, visitor, or visiting fellow, but excludes education materials.

**Staff** means the officers and employees of the University, and includes academic, professional, technical and administrative officers and employees.

**Student** means any student enrolled in an approved course at the University, or in a course or program of study conducted by or on behalf of the University.

**University IP** means intellectual property owned by the University in accordance with the Intellectual Property Policy.

**Visiting fellow** means any person conferred that title by the University under the ANU *Academic Titles Conferral* policy.

**Visitor** includes any person conferred that title under the ANU *Academic Titles Conferral* policy, and/or, any person given access to University resources for the purposes of undertaking academic study, education, research or development, whether or not in

collaboration with the University. For the avoidance of doubt, this policy applies to visitors during the period of their appointment, and beyond where IP was generated during their appointment.

## **Policy statement**

### **Protection and commercialisation of intellectual property**

1. Protection and commercialisation of University IP is undertaken consistent with the following principles:
  - a. to facilitate engagement with external partners and ensure that University research is utilised for maximal benefit to society;
  - b. to support researchers in their entrepreneurial and commercial endeavours;
  - c. to ensure that individuals receive a benefit from commercialisation of University IP created by them as recognition of their intellectual input, where possible; and
  - d. to identify and manage risks to the University associated with commercialisation appropriately.

### **Ownership of intellectual property – Staff**

2. Except for education materials, and scholarly or creative works, the University owns all intellectual property created by staff:
  - a. in the course of their employment with the University; or
  - b. in the course of using funding, facilities or resources of the University, other than as a student; or
  - c. in the conduct or creation of any works commissioned by the University by way of separate agreement, other than the contract of employment, unless agreed otherwise; or
  - d. which vests in the University at law.

### **Ownership of intellectual property – Emeritus and honorary appointees**

3. Except for education materials, and scholarly or creative works, the University owns all intellectual property created by emeritus professors and honorary appointees:
  - a. in the course of their association with the University; or
  - b. in the course of using funding, facilities or resources of the University, other than as a student; or
  - c. in the conduct or creation of any works commissioned by the University by way of separate agreement, unless agreed otherwise; or

- d. which vests in the University at law.

### **Ownership of intellectual property – Students**

4. The University does not assert ownership of IP created by students. The student Intellectual Property Procedure outlines scenarios where assignment of student IP may be required for a student to work on a University project or internship.
5. The University may request an assignment of IP owned by a student, if the student created the IP:
  - a. in the course of undertaking research or education at the University;
  - b. using University IP; or
  - c. in the course of undertaking a project for which funding has been provided to the University by a third party .
6. Where a student assigns IP to the University and the IP is commercialised by the University, the student will be deemed a creator for the purposes of the Intellectual Property Protection and Commercialisation Procedure.
7. Students who are creators of education materials grant to the University the licence as specified in clause 11.
8. Where a staff member is also a student, clause 2 takes precedence over clauses 4 to 8.

### **Ownership of intellectual property – Visitors and visiting fellows**

9. The University does not, as a matter of course, assert ownership of IP created by visitors or visiting fellows. However, where the visitor or visiting fellow is working as part of a project or research activity, in particular where the activity is externally funded, the University may require the visitor or visiting fellow to agree to an IP arrangement in line with project requirements in order to become involved, or continue involvement in, the activity.
10. For avoidance of doubt, when a previous staff member transitions to, or returns to the University as visitor or visiting fellow, IP previously created by them as staff will remain owned by ANU. Provisions to properly manage background intellectual property or University IP to be used should be agreed and documented in the letter of conferral of title, or in a separate written agreement.

### **Licensing of education materials, scholarly works and creative works**

11. Education materials:
  - a. The University does not assert ownership of IP in education materials generated by staff, students, emeritus and honorary appointees, visitors or

visiting fellows except where the work is specifically commissioned by the University through a separate agreement (for example, outside the scope of an employment contract).

- b. A creator of education materials grants to the University a perpetual, world-wide, fee free, royalty free, unrestricted, non-exclusive licence (including the right to sub-licence) to use such works generated by that creator for the University's teaching, educational and research purposes. This licence is subject to any overriding contractual obligations the creator owes to third parties (for example, a publisher of a textbook or a journal article).

12. Scholarly or creative works:

- a. The University does not assert ownership of IP in scholarly works or creative works created by staff, students, emeritus and honorary appointees, visitors, or visiting fellows, except where the work is specifically commissioned by the University through a separate agreement (for example, outside the scope of an employment contract).
- b. Creators (other than students) of scholarly works or creative works grant to the University a perpetual, world-wide, fee free, royalty free, unrestricted, non-exclusive licence (including the right to sub-license) to use such works for the University's teaching, educational and research purposes. This licence is subject to any overriding contractual obligations the creator owes to third parties (for example, a publisher of a textbook or journal article).

### **Ownership of intellectual property - indigenous cultural and intellectual property rights**

13. The University recognises and will protect indigenous cultural and intellectual property rights.

### **Background intellectual property**

14. Any staff, student, emeritus or honorary appointee, visitor, or visiting fellow must inform the University of any background intellectual property they wish to use in any project or activity prior to the commencement of that activity.

15. The staff, student, emeritus or honorary appointee, visitor, or visiting fellow must not use background intellectual property owned by themselves or third parties, in work related to the University until there is a written agreement in place regarding the University's rights in respect of that background intellectual property .

### **Joint intellectual property**

16. Intellectual property can sometimes be owned jointly by two or more parties, where all parties have contributed jointly to creation of the intellectual property.

17. Where a student, visitor, or visiting fellow has not assigned ownership of intellectual property to the University, and the student, visitor, or visiting fellow and another party have created Joint intellectual property, all parties must reach written agreement on any dealings with that intellectual property.

18. For students, intellectual property arrangements with external advisors and other collaborators will be agreed in writing with the University (generally through a paragraph in the letter of invitation that clearly outlines intellectual property ownership and licensing, or a terms sheet).

## **Moral rights**

19. The University recognises the moral rights of the creators of works in which copyright subsists in accordance with the *Copyright Act 1968* (Cth). These rights include the right of attribution of authorship, the right that a work not be falsely attributed and the right of integrity of authorship (that a work not be unreasonably treated, altered or used in such a way that it harms the reputation of the creator).

20. The University will, wherever possible, protect the moral rights of staff, students, emeritus or honorary appointees, visitors, or visiting fellows, particularly where the specified acts may affect academic standing or the proper attribution of academic work intended for open publication. If necessary, under an agreement between the University and a third party, the creator may be requested to provide a written consent to specified acts with respect to their moral rights in works created pursuant to such third party agreement.

## **Confidentiality obligations**

21. Where commercialisation is contemplated, staff, students, emeritus or honorary appointees, visitors, or visiting fellows must not act in a manner which would result in:

- a. the loss of the opportunity to protect or commercialise University IP; or
- b. the University being in breach of obligations to third parties concerning intellectual property.

## **Execution of documents**

22. A creator must, as required by the University, execute all documents and do all acts that may be necessary or desirable in a timely manner to give full effect to the provisions of this policy.

## Document information

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