

Policy: Intellectual Property

Purpose

To promote the advancement and transmission of knowledge generated by University Staff, Students, Visitors and Visiting Fellows in connection with teaching or research for the benefit of society.

Overview

The Intellectual Property (IP) Policy describes the principles of ownership, licensing, management, commercialisation and use of IP and research data created by University Staff, Students, Visitors, and Visiting Fellows.

Scope

This policy applies to all University Staff, Students, Visitors, and Visiting Fellows.

Definitions

Background IP means any IP owned by or licensed to University Staff, Student, Visitor or Visiting Fellow which they wish to use in connection with any University activities.

Commercialise or **Commercialisation** in relation to IP, means to manufacture, have manufactured, use, sell, offer to sell, import, hire or otherwise exploit the IP, or to license or sublicense any third party to do so, for commercial gain. This includes services using IP or products/processes incorporating or derived from IP.

Creative Work means literary, dramatic, musical, or artistic works in which copyright subsists (irrespective of the medium in which the work is recorded), but excludes work that is a computer program as defined in the Copyright Act 1968 (Cth) and works that depict IP owned by the University under this policy in an artistic form (for example photos, graphs, maps forming part of research activities of the employee). **Creator** means any University Staff, Student, Visitor or Visiting Fellow who creates, develops or invents any IP whether or not in conjunction with other persons. For the purposes of the Commercialisation Procedure. Creators include inventors and contributors.

Education Material means all materials produced 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. Personal lecture notes that are not made available to Students or personal notes taken by Students to assist in study are excluded from this definition and will remain the property of the Creator.

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

Research has the meaning set out in the Organisation for Economic Co-operation and Development (OECD) [Frascati Manual \(2015\)](#).

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

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. More information on these rights and knowledge systems can be found at: <https://www.ipaustralia.gov.au/indigenous-knowledge-ip-hub#whatisik>.

Intellectual Property or IP means all rights, anywhere in the world, whether or not registered or registrable (and including rights of registration and applications for registration) including, but not limited to:

- a. copyright;
- b. inventions and scientific discoveries;
- c. trademarks;
- d. designs;
- e. circuit layouts and the like;
- f. trade secrets;
- g. plant breeder's rights; and
- h. any other rights as defined in Article 2 of the Convention (Dated 14th 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 Work means a work in which copyright subsists that is intended for academic publication (for example, any article, book, manuscript, or manual) and has been peer reviewed, regardless of format (for example, printed, digital or electronic versions), but excludes Education Materials.

Staff means the officers and employees of the University, and includes academic, professional, technical and administrative officers and employees whether employed on a casual, fixed term or permanent basis, Emeritus Professors and Honorary Appointees.

Student means a 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 IP owned by the University in accordance with this IP Policy.

Visiting Fellow means a person on whom that title has been conferred by the University in accordance with the *ANU Academic Titles Conferral* policy.

Visitor includes a 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.

Policy statement

Ownership of IP - Staff

1. The University owns all IP created by Staff:
 - a. in the course of their employment or association (as relevant) with the University;
 - b. in the course of using funding awarded either by or to the University, or using the facilities or resources of, the University, other than as a Student;
 - 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; and/or
 - d. which vests in the University at law,

excluding, unless otherwise agreed in writing, IP in Education Materials, Scholarly Works, Creative Works or IP created in the course of activities approved under the Paid Outside Work – 52 Day Rule Policy.

- i. Work conducted under the Paid Outside Work – 52 Day Rule Policy cannot include activities which are likely to lead to new patentable IP. This policy will not govern the ownership of any other IP generated through activities conducted under the *Paid Outside Work – 52 Day Rule Policy* such as copyright in reports. Ownership of such IP will be determined between the researcher and the funder of such work.

Ownership of Intellectual Property ensures that the University can enter into agreements for the sponsorship of research and research translation, and undertake its activities as an educational body.

Ownership of IP – Students

2. The University does not, as a matter of course, assert ownership over IP created by Students. However, where the Student is working as part of a project or research activity, particularly where the activity is externally funded, the University may require the Student to agree to an IP assignment or licence in order for the Student to become involved, or continue involvement, in such activity.
3. The Student Intellectual Property Procedure outlines further circumstances where assignment of Student IP may be required for a Student to work on a University project or internship.
4. If a Student is also employed by the University, the IP created in the course of, or arising out of, their employment, will be governed by this policy as it applies to Staff.

Ownership of IP – Visitors and Visiting Fellows

5. 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 through the University or makes use of University facilities and resources, then the University may require the Visitor or Visiting Fellow to agree to an IP assignment or licence in order to become involved, or continue involvement in, the activity. In order to retain their visiting status, all IP arrangements must be resolved and documented to the satisfaction of the University as determined in each case by the Deputy Vice Chancellor (Research & Innovation).

Licensing of Education Materials, Scholarly Works and Creative Works

6. A Creator owns IP in Education Materials, Scholarly Works or Creative Works unless otherwise specified in a separate agreement with the University.
7. A Creator of Education Materials, Scholarly Works or Creative Works grants to the University a perpetual, irrevocable, world-wide, fee free, royalty free, unrestricted, non-exclusive licence (including the right to sub-licence) to use such works for University 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) that have been notified to the University.
8. The Creator must make all reasonable efforts to ensure that the licence in paragraph 7 can be granted to the University when reaching agreements with third parties, and notify the University as soon as practicable after entering into contractual obligations that restrict the licence able to be granted.

What is and is not IP

9. IP can take many different forms. A definition of important terms and useful explanations of those different forms can be found at the [IP Glossary](#).

10. Moral Rights

- a. Moral Rights are not IP but are closely aligned with IP. Moral Rights belong personally to Creators and cannot be sold or assigned. These rights are defined in the [Copyright Act 1968 \(Cth\)](#) and include:
- b. the right of attribution of authorship;
- c. the right that a work not be falsely attributed; and
- d. 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).
- e. In Australia, Moral Rights cannot be waived in a general way. An author or creator must consent to specified acts (for example, details of how a work may be used by another party without attribution) which would otherwise infringe their Moral Rights.
 - i. The University will, wherever possible, protect the Moral Rights of University Staff, Students, Visitors and Visiting Fellows, particularly where the specified acts may affect academic standing or the proper attribution of academic work intended for open publication. However, if necessary, under an agreement between the University and a third party, the Creator may be requested to provide written consents to specified acts with respect to their Moral Rights in works created pursuant to such third-party agreement.

11. Research data

- a. IP may exist in research data (including metadata) where a certain level of intellectual process has been applied to organise, tabulate or describe the data.
- b. IP may also exist in research data (including metadata) where that data is confidential and has not been made publicly available. Where IP in research data exists, then this IP Policy applies.
- c. Unless otherwise agreed by the University, the University asserts ownership in research data created in the course of University activities.

Protection of Indigenous Cultural and Intellectual Property Rights

12. To the extent that an Indigenous research project involves Intellectual Property, this policy applies.

13. There must be an agreement that sets out the ownership of Intellectual Property when undertaking a research project with an Indigenous party/s.
14. Laws applying to modern concepts of IP have requirements not applicable to Indigenous cultural knowledge, such as requiring a work to be newly created and original, or registration to protect is the IP only for a fixed period of time. Indigenous cultural knowledge does not satisfy those requirements as it is old, community-owned and protected in perpetuity, therefore must be dealt with separately to IP.
15. Research projects funded by third parties who require the ownership of, or licence to, project IP must specify that Intellectual Property (including that contributed by an Indigenous party/ies be owned by the University, or that the University has a licence with a right to sublicense the IP.
16. To the extent that the research project involves Indigenous cultural knowledge, the applicable research agreement must specify that it is owned by the Indigenous party/ies except in rare circumstances. The University must not enter not agreement with third parties where secret and sacred Indigenous cultural knowledge is assigned or licenced to the funder or research partner. Cultural knowledge that pre-exists the Indigenous research project must be protected within the agreement, and ownership must never transferred or assigned by the research agreement.

Protection and Commercialisation of IP

17. Protection and Commercialisation of University IP must be undertaken in accordance with *the IP Protection and Commercialisation Procedure*, which contains the following principles:
 - a. Facilitation of engagement with external partners and ensure that University research is utilised for benefit to society;
 - b. Support of researchers in their entrepreneurial and commercial endeavours;
 - c. Facilitation of Creators receiving a benefit from Commercialisation of University IP created by them as recognition of their intellectual input, where possible; and
 - d. Identification and management of risks to the University associated with Commercialisation appropriately.

Obligations in respect of IP

18. University Staff, Students, Visitors and Visiting Fellows must not act in a manner which would result in the University or themselves being in breach of obligations to third parties concerning IP.

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Contact Area	Research Services (douglas.robertson@anu.edu.au)
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