

# Intellectual Property Rights Policy

## Section 1 - Definitions

(1) For the purpose of this Policy:

- a. Award means a degree, diploma, doctorate or other certificate conferred by the University;
- b. Commercial Benefit means the benefit, whether monetary or non-monetary, received by the University and arising from the Commercialisation of any Intellectual Property Rights, including, without limitation, revenue from sales, payment of royalties, licence fees or in-kind contribution in lieu of royalties or licence fees;
- c. Commercialisation Costs means any amount (including, without limitation, any Australian or foreign taxes, charges or other imposts, or any legal costs) that the University incurs in connection with:
  - i. protecting, registering or maintaining any Intellectual Property Rights in any country, or enforcing those Intellectual Property Rights against a third person;
  - ii. developing Intellectual Property Rights for the purpose of obtaining registration or seeking Commercial Benefit; or
  - iii. exploring, negotiating and administering the generation of Commercial Benefit.
- d. Commercialise (and by extension, Commercialisation) means to:
  - i. protect, register or enforce Intellectual Property Rights in any country by any means; and
  - ii. sell, license, distribute or exploit Intellectual Property Rights by any means for the purposes of receiving Commercial Benefit.
- e. Commissioned Material means any material in any format or medium created as the result of a specific request or direction by the University to, or pursuant to a contract with, a Staff Member.
- f. Copyright Act means the Copyright Act 1968 (Cth).
- g. Course means a course of study offered by the University to Students or to members of the public more generally (for example, continuing education courses), regardless of whether it leads to an Award.
- h. Educational Material means any material in any format or medium created or developed for the purpose of teaching at the University and includes, without limitation, examination questions, unit outlines, presentations, databases and lecture notes. To the extent that a work may be both Educational Material and a Scholarly Work, it will be treated under this Policy as Educational Material.
- i. Intellectual Property Notification means the form required to be completed under clause (19) containing:
  - i. a written summary of the Intellectual Property Rights created;
  - ii. if the Intellectual Property Rights are an invention, a written summary of why it is new or inventive and the process or manner by which it was derived;
  - iii. the names of all Originators;
  - iv. full details of the nature of the contribution of all Originators;
  - v. ideas about any potential Commercialisation opportunities in respect of those Intellectual Property Rights;
  - vi. advice as to whether the Intellectual Property Rights have been kept confidential or, if disclosed to another person(s), the details of to whom they have been disclosed.
- j. Intellectual Property Officer means a person appointed by the Vice-Chancellor who is responsible for making

- certain decisions under this Policy, and if no person is appointed as the Intellectual Property Officer, the Deputy Vice Chancellor (Research and Academic Capability) or the delegate of the Vice-Chancellor.
- k. Intellectual Property Rights means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, new plant varieties, circuit layouts, eligible layout rights, chip topography right, product formulations, processes, methods and inventions and any other rights of a proprietary nature, whether registrable or not and wherever existing in the world, including all renewals, extensions, continuations and revivals of, and all rights to apply for, any of the foregoing rights.
- l. Moral Rights has the same meaning as in the Copyright Act, namely the author's right:
- i. to be attributed as the author of the work;
  - ii. not to be falsely attributed as the author of the work; and
  - iii. of integrity of authorship in the work.
- m. Net Commercialisation Benefit means the Commercialisation Benefit received by the University in respect of any Notified IPR less any Commercialisation Costs incurred by the University in respect of the Notified IPR.
- n. Notified IPR means any Intellectual Property Rights specified in an Intellectual Property Notification.
- o. Open Education Resources (OER) means teaching, learning and research materials in any medium that reside in the public domain or have been released under an open licence that permits their free use or modification by others.
- p. Originator means a person who creates or contributes to the creation or development of any Intellectual Property Rights, whether alone or with any other person(s) and includes, without limitation, a Staff Member or a Student participating in a Research Project who has assigned those Intellectual Property Rights in accordance with the Policy.
- q. Register means the Register of Intellectual Property Rights to be established and maintained in accordance with the Policy.
- r. Research Project means any research project in which the University participates or is otherwise involved through the participation of Staff Members, regardless of who funds it and whether that research project includes third parties participants.
- s. Scholarly Work means any work of a scholarly nature including, without limitation, a journal article, conference paper, not being Course Materials or Commissioned Materials.
- t. Staff Member means a person who is a member of the academic or non-academic staff of the University, regardless of whether they are employed on a full time, part time, contract or casual basis, and includes without limitation:
- i. staff who enter into a separate contract with the University to create or develop Commissioned Material;
  - ii. people who are given visiting, conjoint or adjunct appointments to the University; and
  - iii. Students, to the extent that they are employees of the University.
- u. Student means a person enrolled as a student of the University, or in a Course, at the time he or she creates or develops any Intellectual Property Rights.
- v. University-sponsored work has the same meaning as in the University's Outside Work policy.
- w. Work means any literary, musical, dramatic, or artistic work, as those terms are used in the Copyright Act.

## Section 2 - Policy Statement

### Part A - Policy Declaration

(2) 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 created as a result of these

activities is a significant and valuable asset, which must be responsibly managed to support the University's mission and strategic goals, acknowledge the rights of contributors and optimise the benefits for our communities.

## **Part B - Policy Description**

(3) 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. It supports the National Principles of Intellectual Property for Publicly Funded Research as identified by the Australian Research Council.

(4) As an employer, the University retains ownership over Intellectual Property Rights created by its staff in the course of their employment (this applies to both academic and non-academic staff) as prescribed by law, for instance, section 35(6) of the Copyright Act. However, in some cases, the University may elect not to exert ownership over certain Intellectual Property Rights, such as the rights in scholarly texts and some educational materials.

(5) In most cases, Students own any Intellectual Property Rights they create or develop while undertaking study at the University. There are some exceptions to this as prescribed by law, for instance, if a Student creates Intellectual Property Rights in pursuance of a contract of service, as contemplated by section 35(6) of the [Copyright Act](#).

(6) This Policy deals with ownership of Intellectual Property Rights created by Staff Members and Students of Southern Cross University, and provides a framework to ensure that where appropriate Intellectual Property Rights can be commercially exploited for the mutual benefit of all parties concerned.

## **Part C - Content and Implementation**

(7) Subject to clause (8), this Policy repeals and replaces any existing policies and procedures, or the instruments of the University regulating Intellectual Property Rights.

(8) This Policy does not affect any existing contractual arrangements regulating Intellectual Property Rights of Staff Members and Students.

## **Part D - Ownership – Staff Members**

(9) The University asserts ownership of all Intellectual Property Rights created or developed by any Staff Member in pursuance of the terms of his or her contract of employment with the University including, without limitation, Intellectual Property Rights:

- a. generated from any Research Project or University-sponsored work, subject to any agreement with the Staff member or a third party regulating those Intellectual Property Rights;
- b. in any Educational Materials not exempted under clause (11);
- c. in any computer program as defined in section 10 of the [Copyright Act](#);
- d. in any invention or discovery, including an entitlement to apply and obtain any patent protection in respect of the invention or discovery, derived intentionally or incidentally from a Research Project or research conducted in the course of the Staff Member's duties;
- e. in any Commissioned Material.

(10) Subject to any disclaimer of the University's claim to ownership of Intellectual Property Rights in accordance with clause (11), a Staff Member must do all things necessary to ensure that the Intellectual Property Rights described in clause (9) vest in the University, including executing any formal assignment of those rights as the University may require.

(11) Subject to clause (12), the University retains a discretion to disclaim its ownership in respect of any Work created

or developed by Staff Members that consists of:

- a. journal articles;
- b. conference papers;
- c. any Educational Material that is not Commissioned Material and is created from or for Open Education Resources, on the condition that the University always retains an irrevocable, non-exclusive, royalty free, perpetual licence to use and develop those works for teaching and research purposes; or
- d. any Work that is not Commissioned Material or Educational Material, on the condition that the University always retains an irrevocable, non-exclusive, royalty-free, perpetual licence to use and develop those Works for the purposes of teaching and research.

(12) In deciding whether to exercise its discretion under clause (11), the University will take into account the following factors:

- a. the nature of the Intellectual Property Rights created;
- b. the extent to which the Originator used funding or resources provided by the University or a third person to develop that Work;
- c. the obligations of the University under any agreement where the Work arises from a Research Project;
- d. the obligation or requirement of any Staff Member to assign any Intellectual Property Rights to a publisher or other person as a condition of publication or participation in any conference;
- e. the interests of any other Staff Members or Students in respect of that Work;
- f. the extent to which the proposed use of that Work by the Staff Member is usual or customary in the context of that Staff Member and his or her activities as such;
- g. any other matters that the University considers relevant.

(13) A decision under clause (11) shall be made by the Intellectual Property Officer.

(14) If a decision is made by the Intellectual Property Officer under clause (11) to disclaim ownership of any Intellectual Property Rights, the University must do all things necessary to ensure that those Intellectual Property Rights vest in the Staff Member, including executing any formal assignment of those rights as the Staff Member may require.

## **Part E - Moral Rights – Staff Members**

(15) Subject to any agreement with a Staff Member to the contrary, the University will respect that Staff Member's Moral Rights by:

- a. acknowledging that Staff Member as author, unless it is reasonable in all the circumstances not to do so;
- b. consulting with that Staff Member before significantly modifying or adapting any Works generated by that Staff Member, provided it is reasonable to do so;
- c. not subjecting a Work to derogatory treatment within the meaning of Part IX Division 4 of the [Copyright Act](#); and
- d. where modification or adaptation of a Work has occurred, indicating that the modification or adaptation has occurred.

## **Part F - Ownership - Students**

(16) The University acknowledges that:

- a. assignment of Intellectual Property Rights; or

- b. consent in relation to any Moral Rights of a Student, is not a condition of enrolment in the University under any circumstance.

## **Part G - Exceptions - Students**

(17) Notwithstanding Part F, the University may require a Student to:

- a. assign, license or grant certain rights in respect of his or her Intellectual Property Rights; and/or
- b. give certain consents in relation to his or her Moral Rights, as a condition of that Student's participation in any Research Project.

(18) It is the responsibility of the head of the Research Project to advise the Student before the Student is allowed to participate in that Research Project that:

- a. the Student is or may be required to assign, license or grant certain rights in respect of his or her Intellectual Property Rights and/or to give certain consents in connection with his or her Moral Rights as a condition of participating in the Research Project; and
- b. the Student should seek independent legal advice about his or her rights.

## **Part H - Moral Rights - Students**

(19) Subject to clause (16), the University will respect a Student's Moral Rights by:

- a. acknowledging the Student as author, unless it is reasonable in all the circumstances not to do so;
- b. consulting with the author Student before significantly modifying or adapting the Work, provided it is reasonable to do so;
- c. not subjecting the Work to derogatory treatment within the meaning of Part IX Division 4 of the [Copyright Act](#).

## **Part I - Reporting and Commercialising Intellectual Property Rights**

(20) Originators who believe they have created or developed Intellectual Property Rights:

- a. owned by the University in accordance with clause (9)a, c or d; and
- b. which are capable of Commercialisation, must notify the Intellectual Property Officer as soon as practicable upon creation or development of the Intellectual Property Rights, by providing the Intellectual Property Officer with a completed Intellectual Property Notification.

(21) Until the University makes a decision under clause (22), the Originators of Notified IPR:

- a. remain responsible for taking all reasonable steps to protect the Notified IPR, in accordance with any policies or codes of conduct of the University relating to research, including refraining from publishing the Notified IPR;
- b. may take advice from the Intellectual Property Officer on how best to protect the Notified IPR.

(22) The University must:

- a. decide within 28 days of receiving a notification under clause (20) whether the University intends to pursue Commercialisation of the Notified IPR;
- b. notify each Originator of its decision under clause (22)a; and
- c. if the University pursues Commercialisation of the Notified IPR, ensure that the details of the Intellectual Property Notification are entered in the Register.

(23) If the University decides not to pursue the Commercialisation of Notified IPR pursuant to clause (22):

- a. the Originators are free to publish or protect the Notified IPR;
- b. the University makes no further assertion of ownership of the Notified IPR;
- c. to the extent necessary to allow any Originators to fully Commercialise any Notified IPR, the University will assign the Notified IPR to the Originator (if there is more than one Originator, the University will assign the Notified IPR according to the respective contributions of each Originator to that Notified IPR or as otherwise agreed by those Originators and failing agreement by the Originators, in equal shares).

## **Part J - Commercialising Intellectual Property Rights**

(24) If the University notifies an Originator under clause (22)b that it intends to Commercialise Notified IPR, then the University's obligations under Part J and Part K are subject to the University and each Originator first entering into an agreement acceptable to the University to enable the Commercialisation of the Notified IPR.

(25) Any registration of Notified IPR shall be obtained in the University's name and at the University's cost.

(26) Any decisions made by the University about Commercialisation of Notified IPR are ultimately matters for the discretion of the University and shall be binding on the Originator(s).

## **Part K - Distribution of Commercial Benefits**

(27) Any Net Commercial Benefit from Notified IPR shall be distributed as follows:

- a. one third to the Originator (or, if there is more than one Originator, one third to be shared among each of them according to their respective contributions to that Notified IPR or as otherwise agreed by those Originators and failing agreement by the Originators, to be shared among them equally);
- b. one third to the relevant academic or administrative unit (as the case may be) (or where there is more than one unit involved, one third to be shared among each of them according to the respective contributions to that Notified IPR by the Originators); and
- c. one third to the University.

(28) If it is not practicable to distribute Commercial Benefits of a non-monetary kind in accordance with clause (27), then the University, after first consulting with the Originators, may determine in its discretion a mechanism for distributing those Commercial Benefits by some other means, which may include, without limitation, the University holding those Commercial Benefits in trust for the Originators.

## **Part L - Notifying and Dealing with Disputes**

(29) If an Originator has any concerns about how this Rule is interpreted or applied in a particular case that affects that Originator, then he or she must notify the Intellectual Property Officer and any other Originator and provide full details of the nature of the dispute.

(30) If the Intellectual Property Officer receives a notice under clause (29), then he or she must convene a meeting within 14 days (or as soon as practicable after that time) and shall act as Chair and try to resolve that dispute.

(31) If a dispute cannot be resolved within 14 days of the meeting being convened under clause (30), then the Intellectual Property Officer must notify the Vice-Chancellor about the dispute and provide full details (including any documents) in relation to that dispute.

(32) The Vice-Chancellor must determine any dispute referred to him or her under clause (31) within 28 days of that

dispute being referred. The Vice-Chancellor's determination under this Subclause is final and binding on the University and all Originators.

## **Part M - Register of Intellectual Property Rights and Record-keeping Requirements**

(33) The University Legal Office will maintain a Register of Intellectual Property Rights, which shall also include in it details of the Notified IPR that the University determines should be Commercialised in accordance with clause (22).

(34) The details of the Notified IPR that the University determines should be Commercialised which must be entered on the Register are:

- a. a full description;
- b. the date or dates on which they were developed or created;
- c. the name(s) and contact details(s) of the Originators;
- d. the name(s) and contact detail(s) of the people who notified Intellectual Property Rights under clause (20);
- e. any determination of the University about how those Intellectual Property Rights are to be Commercialised;
- f. if those Intellectual Property Rights are registered (for example, as a patent, design or trade mark), the relevant registrations details, including, any due date(s) for renewal;
- g. any other details that the Vice-Chancellor determines necessary or desirable, including for the purpose of compliance with any laws of any policies of guidelines of the University.

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	17th May 2021
<b>Review Date</b>	17th May 2024
<b>Approval Authority</b>	Vice Chancellor
<b>Approval Date</b>	17th May 2021
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Mary Spongberg Deputy Vice Chancellor (Research and Academic Capability) +61 7 55893361
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