

Intellectual Property Policy and Procedure



1 Purpose

To establish a structure for the ownership, reporting, identification, management and commercialisation of Intellectual Property.

2 Scope

This policy applies to:

- All professional and academic employees whether full-time, fractional, continuing, fixed term or casual.
- Visiting and adjunct academics
- Students of the University

3 Policy Statement

The University seeks to provide an environment for the encouragement of creative work, the dissemination of knowledge and the advancement of teaching, learning and research. Intellectual Property created out of these activities is recognised by the University as a valuable asset.

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 but this must be balanced with the recognition of the importance of Commercialisation of Intellectual Property for and on behalf of the University for a financial return.

This policy seeks to facilitate, where appropriate, the Commercialisation of Intellectual Property created by the University's Employees and Students. The University recognises that Employees and Students as Originators are entitled to an equitable share of any financial returns from such Commercialisation.

(Approved by Council 15 August 2011)

4 Principles

This policy sets out the principles of ownership of intellectual property generated by Employees

and Students of the University.

The policy provides procedures for the disclosure protection, management and Commercialisation of University Intellectual Property.

The policy acknowledges the contribution of Employees (and Students) who assign ownership of their Intellectual Property to the University) is recognised through the sharing of financial rewards.

This policy recognises and respects the Moral Rights of Originators of Intellectual Property.

5 Procedures

5.1 Ownership of Intellectual Property

5.1.1 Intellectual Property created by Employees

Other than as stated in paragraphs 3 and 4 of section 5.1.1 below, the University, as an employer owns all Intellectual Property invented, created, made or designed by an Employee in the Course of Employment. This includes copyright in any material that is:

- Course Material;
- Computer Works;
- Administration Material; or
- Material created at the express request or direction of the University.

An Employee may be required to sign an agreement to formally record USQ's ownership of USQ Intellectual Property, in particular to enable patent applications to be made. This includes agreements where an Employee is engaged on a University Project.

Ownership of copyright in Scholarly Material or Artistic Works produced by an Employee shall remain with that Employee unless it is commissioned by the University as part of the Employee's duties or created as part of a contractual obligation between USQ and a third party.

Where the University owns a copyright work created by an Originator (including Course Materials), the Originator may request a license to use the Intellectual Property in that work. Where the Originator wishes to use that Intellectual Property for purposes outside the Course of Employment, the University reserves the right to grant a non-exclusive licence on conditions, or to not grant a licence, if it considers the University interests, including Commercialisation of the Intellectual Property would be adversely affected by such a grant.

The University does not seek to claim ownership over any Intellectual Property created by an

Employee outside the Course of Employment provided no use of University Resources has been used to generate that Intellectual Property. If University Resources are used then the University reserves the right to claim a negotiated percentage ownership of that Intellectual Property.

Employees who bring existing Intellectual Property to USQ to be used in the Course of Employment, must provide evidence of ownership when disclosing that Intellectual Property to the University. This ensures their ownership and contribution to Intellectual Property development at USQ will be recognised.

5.1.2 Intellectual Property created by Students

Other than as stated in paragraph 2 of section 5.1.2 below, the University makes no automatic claim to ownership of Intellectual Property created independently by Students who are not Employees of the University.

A Student may be required to assign his/her Intellectual Property rights as a pre-condition to involvement in a University Project. An assignment of Intellectual Property rights by a Student must not however be made a condition of enrolment in the University.

It is the responsibility of the head of a University Project to advise a Student he/she may be required to assign Intellectual Property rights pursuant to paragraph 2 of section 5.1.2 above. The Office for Research and Higher Degrees will be responsible for coordinating advice to the Student to seek independent legal advice on the implications of an assignment.

The University, as part of any assignment of a Student's Intellectual Property rights, may impose restrictions on examination and publication of the Student's thesis in order to allow time to put in place protections for any Intellectual Property generated from a University Project. Notwithstanding, a Student shall be entitled to have any restrictions on publication removed within 24 months unless the University can provide reasonable evidence that the restriction should continue for a further period.

Any assignment of Intellectual Property rights by a Student will not affect ownership of copyright in a Student's thesis even if the Student is an Employee.

Where a Student has assigned Intellectual Property to the University under this Policy, the Student will be treated no less favourably than an Originator who is an Employee.

If an Employee is also enrolled as a Student and the subject matter of the Student's research is created by the Student in the Course of Employment, then the University, as the employer, will own the Intellectual Property in that research, subject always to thesis ownership arrangements under paragraph 5 of section 5.1.2 above.

5.1.3 Intellectual Property created by Visitors

Agreements relating to a Visitor's work at the University including ownership rights relating to Intellectual Property created during such work, must be agreed and signed prior to the

commencement of the work. Intellectual Property created by a Visitor involved in a University Project will be owned by the University or owned in accordance with any agreement governing the conduct of that University Project. An agreement, assigning any such Intellectual Property will be required before the Visitor commences work on the University Project or uses University owned Intellectual Property.

Visitors participating in a University Project have an obligation to report the creation of Intellectual Property or inventions under the procedures set out in section 5.5. Such Intellectual Property will be managed under the procedures set out in that paragraph.

Visitors are required to keep confidential information confidential and such obligations will be contained in an agreement relating to the Visitor's work at the University.

5.2 Confidential Information

Employees, Students and Visitors who receive University Confidential Information must not disclose that information without express consent from the University. If required by operation of the law to make a disclosure, the Employee, Student or Visitor will first inform the University prior to making the disclosure.

5.3 Moral Rights

The University recognises the right of an Originator to be acknowledged as the creator of Intellectual Property, and the right to object to derogatory treatment of that Intellectual Property. The University will take all reasonable steps to ensure that the Moral rights of the Originator are respected and to endeavour that others respect those Rights.

Subject to any contracted obligation to which the University is a party, the use of the whole or part of the work of an Originator shall be appropriately acknowledged in accordance with academic practices.

The University recognises that Moral Rights are personal in nature and cannot be sold or licensed or assigned and vest in the Originator irrespective of his/her employment status and ownership of copyright in the materials.

5.4 Indigenous Cultural Knowledge

The University makes no claim to ownership of Intellectual Property in Indigenous Works.

Where the creation of University Intellectual Property involves the traditional interests of Indigenous Australians then the University will consult with relevant Indigenous groups for the purpose of ensuring that the interests and/or knowledge is recognised and protected in accordance with Indigenous protocols and the Australian law.

5.5 Decisions as to Commercial Exploitation

5.5.1 Obligations to Make Disclosures of Intellectual Property

An Originator who creates any Intellectual Property reasonably capable of Commercialisation and to which the University is entitled under paragraph 1 of section 5.1.1 must, as soon as possible after its creation:

- report that fact to the head of their Organisational Unit and to the Office of External Relations; and
- provide full details of the Intellectual Property created and the names of the Originators in a form prescribed by the University through the Office of External Relations ; and
- provide sufficient details in the disclosure to enable the Office of External Relations to make an assessment of the value of the Intellectual Property; and
- take all reasonable steps to protect the Intellectual Property pending a decision by the University under section 5.5.5 below. No public disclosures such as publication or presentations or submissions to journals or conference abstracts should be made unless authorised in accordance with this Section 5.5.

Where there is any doubt as to whether Intellectual Property may be capable of Commercialisation, it is the responsibility of the Originator to see clarification from the Office of External Relations.

5.5.2 Investigation of Commercial Viability

The Office of External Relations will in conjunction with the Originator, undertake a preliminary investigation to determine patentability of the Intellectual Property as well as its Commercialisation viability. The Office of External Relations shall also be responsible for applying for any provisional patent on an invention.

If the Office of External Relations 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 head of the Organisational Unit shall:

- consult with the Originator and any other relevant parties; and
- determine a time when publications of the information may take place, taking into account the principle set out in Section 4.

5.5.3 Reporting on Intellectual Property

The Office of External Relations must report to the Deputy Vice-Chancellor (Research & Innovation) at least every four (4) months:

- all details of disclosures made in the preceding four (4) months
- its proposed strategies on Commercialisation, protection and viability;
- the costs incurred on individual patents,
- the status of commercial agreements associated with patents; and
- a recommendation for maintenance/termination of any patents.

5.5.4 Recommendation of Strategies for Protection of Intellectual Property

The Office of External Relations shall be responsible for recommending strategies for protection of all Intellectual Property disclosed under this section 5.5 to the Deputy Vice-Chancellor (Research & Innovation). Proposals for Commercialisation and protection of Intellectual Property shall take into account University budgetary provisions. Management of Intellectual Property protection will be undertaken by the Office of External Relations. Any decision relating to Commercialisation will be made on the basis of appropriate legal, financial and commercial advice. Where possible the Office of External Relations will consult with the Originator(s) but shall be under no obligation to do so.

5.5.5 Procedures for Commercialisation decision making

If, with respect to a disclosure of Intellectual Property, the University

- makes no decision by the end of a twelve (12) month period from the disclosure date or in the case of a provisional patent from the date of filing; or
- decides at any time prior to the relevant period in the dot point above the University does not wish to protect or Commercially exploit the reported Intellectual Property, then the Originator(s) is (are) free to protect or Commercially exploit in any manner they choose.

The Originator(s) will be notified in writing of a decision by the University as to whether or not it intends to proceed to Commercialisation of relevant Intellectual Property.

The Office of External Relations may, in cases where a period in excess of twelve (12) months is required, seek permission from the Originator(s) for an extension of time for continued management of the Intellectual Property.

All Commercialisation agreements concerning Intellectual Property must be prepared, negotiated and executed in accordance with USQ contract management requirements and financial delegations.

5.6 Registration of Intellectual Property Rights

5.6.1 Patents

The Office of External Relations, on behalf of the University, is responsible for managing the University's patent portfolio and maintaining a Register of Patents.

If the University agrees to proceed with protection of the Intellectual Property through a provisional patent application:

- the Office of External Relations will discuss with the Originator(s) and the head of the Organisational Unit the requirements for filing the application and the timeframe for submission of the application;
- the Office of External Relations will be responsible for preparation and submission of the application, with the assistance of the Originator(s) and external patent attorneys; and
- the cost of filing all patent applications will be borne by the Office of External Relations.

Where the University approves termination of patent protection, the Intellectual Property rights will be offered to the Originator(s). The University will give the Originator(s) at least 30 days written notice of its intention not to proceed with patent protection. The University reserves the right to recover its costs up to the time of transfer.

5.6.2 Trademarks and Registered Designs

The University's Legal Office shall be responsible for managing the University's portfolio of trademarks and designs and for preparing and submitting applications.

5.6.3 Registration Costs

The cost of filing applications will be borne by relevant Organisational Unit.

5.7 Distribution of Financial Returns

Where the University derives any financial return from the Commercialisation of Intellectual Property, it shall be distributed in accordance with the provisions set out in paragraph 3 of section 5.7 below, unless otherwise specified in agreed contractual arrangement(s) specific to the Commercialisation.

Notwithstanding paragraph 1 of section 5.7 above, the Originator shall not be entitled to any return in relation to copyright material when used as Course Materials for Students.

Net Revenues from Commercialisation received by the University shall be distributed as follows:

- 33.33% to the Originator(s);
- 33.33% to the University;
- 33.33% to the relevant Organisational Unit(s).

Where more than one Originator is involved, the Originators shall determine how their share of Net Revenue shall be divided between them, and inform the University of their decision. Such decision shall be provided in writing no later than six (6) months from the disclosure date in paragraph 1 of section 5.5 above. If the Originators do not provide a decision in writing by the due date then the University may make a decision as to the sharing amongst the Originators. Such decision shall be communicated in writing to the Originators.

Distributions of Net Revenue will be made to the Originator(s) regardless of whether they remain employed by the University. If an Originator is deceased, the distribution will be paid to the estate (or beneficiaries). The University will withhold payment when it believes the law requires it to do so.

5.8 Copyright Compliance

Copyright compliance is managed by the University under the *Copyright Act 1968*. Contractual arrangements under that Act with Copyright Australia Limited allow universities to reproduce and communicate copyright material for educational purposes under specific conditions.

In order to ensure and maintain copyright compliance, all material intended for distribution to Students for Courses and for which the University does not own the copyright or which contains copyright material not owned by the University, must be managed in accordance with paragraph 3 of section 5.8 below.

Material referred to in paragraph 2 of section 5.8 above must be submitted to the University's Digital Resources Collection (DiReCt) repository (or any successor) which material will be appropriately stored by DiReCt staff under published University approved processes. Material referred to in paragraph 2 of section 5.8 above must not be loaded or stored into any repository or technological based storage system, including personal websites, other than by DiReCt approved staff.

DiReCt staff will manage the copyright permissions and reporting processes.

5.9 Intellectual Property Agreement

The University may enter into agreements concerning Intellectual Property rights and ownership including Intellectual Property assignments, which will override the provision of this policy. This includes agreements with external bodies, Employees and Students.

5.10 Dispute Resolution

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 Deputy Vice-Chancellor (Research & Innovation) will appoint a mediator to assist the parties in resolving their dispute.

If such a dispute cannot be resolved through the assistance of a mediator, the Deputy Vice-Chancellor (Research & Innovation) will appoint a suitably qualified person to conduct an investigation into the dispute. Such appointment(s) or persons may be external to the University and where more than one person is appointed to an investigation one of those persons will be an external appointment.

The person(s) conducting the investigation will act expeditiously and will have access to all persons and relevant information to fully investigate the matter consistent with the principles of natural justice. The investigation may entail gathering evidence and interviewing the parties to the dispute which may include Employees and Students. The parties to the dispute may make submissions in writing to the investigator(s). Confidentiality will be respected at all time during the investigation process, within the constraints of needing to fully investigate the matter.

The outcomes of the investigation together with recommendations will be forwarded to the Vice-Chancellor for consideration. The Vice-Chancellor will review the outcomes but is not bound to accept the recommendation of the investigation.

Following receipt of the investigation the Vice-Chancellor shall make a finding on the dispute which shall be in writing and shall be final and binding on all parties to the dispute.

5.11 Information and Education

Upon adoption of this policy, the University shall take all reasonable steps to ensure that it is communicated and explained to Employees and Students. Such steps will include induction and training sessions and published material available for Employees and Students including material published on the University's website.

6 Delegated responsibilities

Approver	Level of Delegation
Governance & Legislation Committee	Endorse Policy
Deputy Vice-Chancellor (Research & Innovation)	Endorse Policy
Vice-Chancellor's Executive (VCE)	Endorse Policy

7 References

University of Southern Queensland Intellectual Property Policy 1996

8 Schedules

This policy must be read in conjunction with its subordinate schedules as provided in the table below.

9 Policy Information

Subordinate Schedules	
Accountable Officer	Deputy Vice-Chancellor (Research and Innovation)
Responsible Officer	Deputy Vice-Chancellor (Research and Innovation)
Policy Type	Governance Policy
Approved Date	15/8/2011
Effective Date	15/8/2011
Review Date	
Relevant Legislation	Copyright Act 1968 (Cth) Designs Act 1906 (Cth) Patents Act 1990 (Cth) Trademarks Act 1995 (Cth)
Related Policies	Code of Conduct Policy Research Code of Conduct Policy Student Expectations and Responsibilities Policy
Related Procedures	
Related forms, publications and websites	
Definitions	Terms defined in the Definitions Dictionary Definitions that relate to this policy only Administration Materials

Means any material or documentation in any format (such as policies, procedures, business plans, contracts, subject outlines, Course outlines, examination documents, funding applications, reports, promotional brochures, business processes, software) that has been developed for the purposes of University administration, performance evaluation, marketing and legal services

Artistic Works

Means a painting, sculpture, drawing, engraving, photograph or other similar work in any medium.

Commercialise or Commercialisation

Means to make, sell, copy, adapt, apply, publish, develop, licence, franchise or otherwise exploit for the purpose of generating financial or other commercial gain or benefit.

Computer Works

Means a computer program as defined by the *Copyright Act 1968* (Cth) as amended or replaced.

Confidential Information

Means any information whether or not in a material form that the owner treats as confidential or which a recipient should be aware is confidential and includes:

- information about an invention prior to the filing of a patent application;
- un-patentable inventions, discoveries, knowledge, methods, processes and techniques;
- trade secrets and know-how;
- all information related to a patentable invention but not included in a patent application

Course

Means a unit of study given by or on behalf of the University to any Student.

Course of Employment

Means for an Employee the scope of duties set out in the terms and conditions of any workplace agreement of USQ, the position description or duty statement or other agreement between the Employee and the University as at the time the Intellectual Property is created.

Course Materials

Means all copyright material in any medium that is used for the purpose of instruction in a Course including but not limited to material used by the University as part of external study packages. Course Materials do not include material that is prepared by an Employee and used solely for personal use of that Employee in delivering Course tuition.

Employee

Includes academic and professional staff employed by the University as full-time, part-time or casual.

Indigenous Works

Means a copyright work created by persons of Aboriginal or Torres Strait Islander descent, together with tangible and intangible aspects of cultural practises and knowledge systems used as part of the expression of cultural identity.

Intellectual Property

Means all proprietary rights in copyright, patentable and non-patentable inventions including field and laboratory books relating to such inventions, plant varieties, registered and unregistered trademarks, registered and unregistered designs, Confidential Information, circuit layouts and all other rights of intellectual property resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Moral Rights

Has the meaning ascribed to that term in the *Copyright Act 1968* (Cth) as amended by the Copyright Amendment (Moral Rights) Act 2000.

Net Revenues

Means the total of cash income and revenues received from the Commercialisation of Intellectual Property, including royalties and licence fees less all expenses incurred by the University in respect of Commercialisation including legal costs and the costs of protecting,

marketing and defending the Intellectual Property

Office of External Relations

Means the University Organisational Unit constituted under that name or any successor thereto.

Organisational Unit

Refers to a discrete budgetary, administrative or academic organisational unit within the University. It includes faculties, departments, research centres and administrative units.

Originator

Includes an author, creator or inventor of Intellectual Property.

Scholarly Material

Means any article, book, manual, musical composition, creative writing or like publication or any digital or electronic version of the same that contains material written by an Employee based on that Employee's scholarship, learning or research but does not include work that is a Computer Work, Course Materials or Administration Material.

Student

Means a person enrolled in a Course or a program of study at the University.

University Project

Means any independent program of research administered by the University which has the potential to generate Intellectual Property and which may include a program that is:

- funded by an external organisation; or
- funded by a specific allocation of University funds or resources above that which is ordinarily provided to an Organisational Unit; or
- created by a team involving a Student and at least one University Employee; or
- the subject of an agreement between the University and a third

party.

University Resources

Means University infrastructure and includes equipment, information technology, technical and administrative support, financial, human and legal resources.

Visitor

Means any person other than an Employee or Student who takes part in a University Project or who visits any part of the University in which scholarship research or a related activity is conducted at the time they create Intellectual Property. It includes an adjunct, honorary, voluntary or similar appointment.

Keywords

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