

BASIC PRINCIPLES THAT UNIVERSITY STAFF SHOULD TAKE INTO ACCOUNT IN THE FOLLOWING SCENARIOS

1. Students are not employees of the University and therefore without a contract the student owns his/her Intellectual Property ("IP") developed as a result of project/s undertaken at the University. If the student chooses not to assign IP to the University [e.g. by signing a *Student Project Participation Agreement ("SPPA")*] then the University has two choices. It must either offer the student a less commercially sensitive project or allow the student to go ahead knowing that the student will own the IP and be entitled to do what he/she wishes with it including licensing it back to the University. Students are encouraged to discuss IP with their supervisor(s)/Postgraduate Co-ordinator and, if necessary, may obtain independent legal advice. Free legal advice may be available from services listed in the National Pro Bono Resource Centre website: <http://nationalprobono.org.au/about/index.html> Note that until a student has assigned his/her IP to the University, the University cannot act directly on his/her behalf.

The Graduate Centre is responsible for ensuring that the appropriate administrative procedures are followed.

2. In all cases the University endeavours to preserve copyright in the student's thesis. In the University's negotiations with third parties, it will argue that the student should retain ownership of the copyright in his/her thesis. However, IP in the project may be owned by the University or a third party depending on the circumstances.
3. Ownership of pre-existing IP - that owned by a student, an industry sponsor or by the University, is not altered.
4. If a student is employed by an industry sponsor then the industry sponsor as employer owns the student's IP, unless there is a contract between the student as employee and the student's employer (industry sponsor) regarding ownership of student IP. If the student and the industry sponsor have designed the research project and the University makes no contribution to the project, the University will not claim ownership of any resultant IP from that project.
5. Where the student has signed an SPPA and the IP developed by the student in a project is commercialised, the student will benefit as if the student is a University staff member.
6. There is a difference between ownership of IP and commercial revenue received from the commercialisation of IP.

As an example consider the following scenario:

The University applies for a research grant with industry e.g. ARC Linkage. The grant includes support for a student stipend. The University pays the student a stipend and provides resources to the student to carry out the project.

Solution:

It is mandatory under some schemes such as ARC Linkage for an IP agreement to be entered between the ARC Linkage partner and the University. This may provide for sole ownership of IP by the University or joint ownership with the industry partner. It also covers access to IP developed under the project for commercial purposes. Hence, the student must assign any IP developed by him/her to the University (i.e. sign the Student Project Participation Agreement) so that the University can honour its obligations to the industry partner.

7. Where work is covered by an IP agreement it is the responsibility of the student to maintain confidentiality and not disclose information relating to the work of all participants including the student.
8. There may be situations where due to the negotiated agreement with an industry sponsor the University is not able to realise any commercial revenue from the commercialisation of the Student IP. In such a case the student will be advised accordingly.

SCENARIO	SOLUTION
SCENARIO 1	
<p>The student (in his/her own name) applies for a research grant to support his/her research project. The amount applied for may be small. Research Branch submits the student's application to the sponsor. The sponsor makes a grant which the student uses for his/her research project. The University may or may not pay the student a stipend, depending on the status of the student (e.g. honours versus PhD). The University provides resources to the student.</p>	<p>The student should assign IP to the University (sign the Student Project Participation Agreement) if research is of commercial potential. The sponsor usually does not want to own IP. The sponsor is more concerned to receive a copy of the thesis to use for internal business purposes. The University should ensure that the sponsor does not own IP but is granted a licence for non-commercial purposes. It is acknowledged that in this instance it would be rare that there is IP of a commercial application. Student owns copyright in his/her thesis.</p>
SCENARIO 2	
<p>Industry wants to sponsor a student 100%. The student is not employed by the industry sponsor. The industry sponsor wholly designs the project.</p>	<p>The student owns IP unless assigned to the University. The student is to assign IP to the University (sign the Student Project Participation Agreement). The University has obligations to the student in so far as supervision and use of student resources is concerned. The ownership of IP as between the University and the industry sponsor is to be negotiated.</p>
SCENARIO 3	
<p>The student is employed by the Industry sponsor. The Industry sponsor and the student wholly design the project. The University provides minimal resources e.g. student facilities and minor supervision.</p>	<p>Industry sponsor owns its employee's IP and in this limited situation the student is not required to assign IP to the University. However, in all cases an agreement should be put in place dealing with ownership of the IP as the industry sponsor should only own what the student creates. The University needs to ensure that its pre-existing IP is protected. The University should not do anything to assist in the development of the IP within the student's project. If, however, the University contributes to the development of the IP in the student's project then the University may have an interest in the IP resulting from the project. If the University does generate IP then a return on the commercial application of that IP is to be negotiated with the industry sponsor.</p>
SCENARIO 4	
<p>Divisional Scholarship where there is part payment of the student's stipend by a number of third parties (industry parties) including the University. The student is not employed by an industry party providing the Divisional Scholarship.</p>	<p>Student owns IP unless it is assigned to the University. In this scenario the student is required to assign IP to the University (Student Project Participation Agreement). The University is obliged to supervise the student and provides resources for the student. The third parties may have expectations regarding ownership or use of the student's IP. The University will negotiate directly with the third parties the ownership of or use of the IP developed as a result of the student's project.</p>

SCENARIO	SOLUTION
SCENARIO 5	
<p>In the case of CRCs, Centres of Excellence, Clusters or other outside organisations (third party sponsor) where the student is paid a full stipend by the third party sponsor and the University may or may not have a liaison with the third party sponsor. The third party sponsor designs the project and expects 100% ownership of the student IP.</p>	<p>Because of the contractual obligations that the University has to these third party sponsors the student is to assign IP to the University (sign the Student Project Participation Agreement) or direct to the third party sponsor. The University may supervise the student. The University should ensure that its pre-existing IP is not used in the student's work. The University will not make any claim on the student's IP. Normally the University is a member of the third party sponsor (e.g. a core participant in a CRC) so it will receive revenue, at some stage, if the student's IP is of commercial value.</p>
SCENARIO 6	
<p>University students conduct their research at an organisation such as WCH, RAH, Medvet, CSIRO, ACPFG and are not employed by or funded by these organisations.</p>	<p>The student is a student of the University and hence on that basis the student is to assign IP to the University (sign the Student Project Participation Agreement) in the first instance. A separate agreement will be negotiated between the University and the organisation in relation to IP.</p>
SCENARIO 7	
<p>An international student enrolls in the University to complete a degree. The student is supervised by the University and uses University resources. The student is not employed by any third party sponsor.</p>	<p>The student is to assign IP to the University (sign the Student Project Participation Agreement). Further because of the temporary nature of the international student's stay at the University it is imperative that University protects its pre-existing IP.</p>
SCENARIO 8	
<p>An international student is employed by a third party sponsor. The project is designed by the third party sponsor but the student uses University resources and supervision.</p>	<p>The student is to assign IP to the University (sign the Student Project Participation Agreement). A separate agreement will be negotiated between the University and the organisation in relation to IP.</p>

N.B. In situations not covered by these scenarios, supervisors should contact the relevant person (according to Faculty) at Adelaide Research & Innovation (ARI Pty Ltd) – see ARI Pty Ltd list below - who will discuss the appropriate course of action. If, as a result of these discussions, the student is required to sign an SPPA or an embargo is to be placed on the thesis as a result of another agreement having been negotiated, the relevant ARI contact person will notify the Graduate Centre of the action required. Please also note that when a student signs an SPPA the thesis will be automatically embargoed for a period of twelve months.

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