

Intellectual Property Policy



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OVERVIEW

The University is a leader in research and innovation, and supports wide dissemination of research findings and transfer of knowledge. Within an environment in which ideas are often freely shared, this Policy aims to ensure that, where desirable, the University captures and harnesses the value of its [intellectual property \(IP\)](#). It also aims to provide incentives for staff and students to create valuable IP and, where they do so, to reward their innovation. The main aims of this Policy are to:

- inform members of the University community of their rights and obligations relating to IP created in the course of undertaking University activities;
- recognise the creative contribution of our staff and students;
- provide an appropriate incentive structure to reward Originators for successfully [commercialised](#) IP;
- protect the interests of the University and all its members; and
- recognise and promote the benefits of open access to knowledge and its public dissemination, while balancing this with the need to protect commercially valuable outputs of research activity.

This Policy supports the principles relating to the management of IP that are embodied in the [Australian Code for the Responsible Conduct of Research](#), and the [National Principles of Intellectual Property Management for Publicly Funded Research](#).

University of Adelaide Enterprise supports the University community in IP-related matters. Its core roles are the promotion and application of the University's IP and services to industry and the broader community; ; raising awareness of commercial opportunities within the University; and facilitating access to funding for technology development.

Additional advice on compliance with IP obligations imposed by legislation, regulations and mandated codes may be obtained from the University's [Legal and Risk unit](#).

SCOPE AND APPLICATION

This Policy applies to all staff members, students, titleholders and visitors of the University of Adelaide. It deals with IP created within the University, whether relating to education, teaching, research or administration, taking into account Section 9 of the [University of Adelaide Act 1971](#). It applies to any IP created on or after the date on which this Policy was approved.

POLICY PRINCIPLES

Open Access and [Commercialisation](#)

1. The University recognises that there are many ways to engage with the community in the exploitation of IP, depending on the nature of the IP and its potential application. In some cases this may be by means of providing open access to the work, which is a key feature of teaching, research and publications. In other cases, it may be more desirable for the University to protect and [commercialise](#) the IP to achieve the best outcomes and translation of the research.

Ownership

2. The University is entitled to, and asserts ownership of, all IP created by staff members in the course of their employment with the University, unless there is a specific written agreement or exception to the contrary.
3. Students own IP created in the course of their studies, except when a student elects to participate in a project that:
 - a. builds upon pre-existing University IP; or
 - b. is being carried out for, or in conjunction with, an external third party (e.g. a Co-operative Research Centre, a company, etc.), whether under a separate formal agreement or not.
4. In cases where (a) and/or (b) apply, the University is entitled to, and asserts ownership of, the IP (in order to protect interests relating to University IP or obligations to third parties). The student will have the same rights and responsibilities as a University staff member in relation to that IP (as set out in Procedures 1 and 2), including entitlement to a share in [Net Revenue](#) received by the University. This principle is subject to any other agreement in writing between the University and the student or their employing organisation (if any).
5. Unless otherwise agreed in writing with the titleholder or visitor, or their respective employing organisation, the University is entitled to, and asserts ownership of, IP created by titleholders and visitors where the IP was generated solely or primarily through the use of University resources, funds or pre-existing University IP. Titleholders and visitors will have the same rights and responsibilities as a University staff member in relation to that IP (as set out in Procedures 1 and 2), including entitlement to a share in [Net Revenue](#) received by the University.
6. All those engaging in collaborative research with a person or organisation external to the University must ensure that appropriate, agreed arrangements are in place with respect to any delineation of IP ownership and rights of use.
7. The University does not assert ownership over the IP in [Scholarly or Creative works](#), unless:
 - a. the Originator has been engaged specifically by the University to create such work; or
 - b. the relevant work is subject to an overriding contractual obligation with a third party; or
 - c. the relevant work relates to IP which is being [commercialised](#).
8. Where the University does not assert ownership, it is entitled to a free, ongoing, non-exclusive right to use the relevant work for the University's teaching, research and promotional purposes.

Obligations of the University community

9. The University has an obligation to make all reasonable efforts to protect commercially viable IP and derive an income from it (as set out in Procedure 1). In such cases, the [Originators](#) will be appropriately recognised as contributors to that IP (as set out in Procedure 2).
10. Staff and students have an obligation to disclose to University of Adelaide Enterprise the creation of new IP with potential commercial value, or where required by third party agreements.

Rewarding Originators

11. All University IP Originators are entitled to a share of any [Net Revenue](#) that the University derives from its commercial exploitation of the IP created by the Originators, as set out in Procedure 2 of this Policy, except in the following circumstances:
12. The sharing of [Net Revenue](#) with staff members does not apply to any use or commercialisation of [administrative](#) or [teaching materials](#), unless otherwise agreed.
13. [Net Revenue](#) derived from [Plant Breeders' Rights](#) (PBR) for varieties with a PBR Part 1 acceptance date after the effective date of this Policy is excluded from this Policy. The entirety of such revenue is distributed to the School of Agriculture, Food and Wine for reinvestment in plant breeding.

Traditional Indigenous Knowledge

14. The University recognises that the commercial development of products resulting from use of the traditional knowledge of indigenous peoples should be subject to benefit-sharing negotiations with the providers of such knowledge, and conform to the relevant Indigenous protocols and ethical guidelines (including the [Guidelines for Ethical Research in Australian Indigenous Studies](#)).

Moral Rights

15. The University recognises and respects the [Moral Rights](#) of staff members, students, titleholders and visitors, and will use its best endeavours to ensure that those Moral Rights are respected by any third party under contract with the University. In the case of [administrative](#) or [teaching](#) material created by staff members, titleholders or visitors on behalf of the University, those authors consent to the University using or modifying such materials as the University sees fit.

Delegations of Authority

All of the following delegations are also subject to a limitation of approval by Council where the activity in question constitutes a “significant commercial activity”, within the meaning of s.9(1)(h) of the University of Adelaide Act 1971.

Key	Authority Category	Authority	Delegation Holder	Limits
Research	Intellectual Property	Approval to waive or modify the application of this Policy	VC&P	
Research	Intellectual Property	Authority to execute documents for, and on behalf of, the University in dealings relating to any right or interest in the University's equity holdings related to University intellectual property.	VC&P	
Research	Intellectual Property	To sign documents for, and act on behalf of, the University in dealings relating to University owned IP, including licensing.	Provost and DVC&VP(R)	Separate arrangements exist for CRC agreements.
Intellectual Property	Intellectual Property	Approval of confidentiality agreements and material transfer agreements relating to IP	Provost and DVC&VP(R)	
Research	Intellectual Property	To sign documents for, and act on behalf of, the University in dealings relating to University owned IP, including licensing.	Director, University of Adelaide Enterprise	Up to an estimated lifetime value of \$1.0M
Intellectual Property	Intellectual Property	Approval of confidentiality agreements and material transfer agreements relating to IP	Director, University of Adelaide Enterprise	
Research	Intellectual Property	Where it has been decided not to protect or develop the disclosed IP, consider re-assignment requests from the Originator(s), taking into account the related recommendation of the Director, University of Adelaide Enterprise.	Provost and DVC&VP(R)	
Research	Intellectual Property	Approval for staff to use, in subsequent employment, teaching materials created while employed at the University.	Heads of School / Branch	

PROCEDURES

1. Identifying and Developing IP

Responsibility: All staff, students, titleholders and visitors

- a) Promptly disclose the creation of any University IP with commercial potential to University of Adelaide Enterprise, and observe the related requirements of the [Research Grants, Contracts and Consultancies Policy](#). Disclosure of copyright in Scholarly or Creative Works is only required in instances of commercial relevance, where confidentiality in respect of the work is necessary to preserve the value of related IP.
- b) In the case of University IP with potential for [commercialisation](#) (as determined by the Director of University of Adelaide Enterprise), or which is subject to obligations to another party, keep that IP confidential and ensure it is assessed and appropriately handled and protected before it is published or publicly disclosed.
- c) Retain sufficient records, materials and data to justify the outcomes of any research, and to defend those outcomes if challenged.
- d) If proposing to use IP generated in the course of previous employment with another employer, ensure prior disclosure to your line manager or Head of School or Branch. If this IP is intended to be used in any commercial work, then disclose it to University of Adelaide Enterprise as well.

Responsibility: Director, University of Adelaide Enterprise

- e) Following receipt of an IP disclosure, evaluate whether to proceed with protection and/or [commercialisation](#) of that IP, providing preliminary advice on the disclosure within 1 month. University of Adelaide Enterprise may seek external advice in performing this evaluation, and will inform the Originator(s) as soon as possible of the outcome. In performing this evaluation, University of Adelaide Enterprise will advise on the consequences of any disclosure under procedure 1(d) of IP generated in the course of previous employment (including any licence or assignment needs).
- f) If a decision is made to protect and/or [commercialise](#) the IP, determine and implement the best method by which the IP is [commercialised](#) on a case-by-case basis, in consultation with the Originator(s) of that IP.
- g) Keep Heads of Schools/Branches and Executive Deans/Division Heads informed of IP commercialisation proposals in their area, and subsequent progress.
- h) Where a decision is made to register the IP, pay relevant [commercialisation costs](#) until such time as it is determined to cease expenditure.
- i) Where it is decided not to protect or [commercialise](#) the disclosed IP, inform the Originator(s), who may then apply to University of Adelaide Enterprise to do so in their own right. Prompt consideration will be given to any such application and the implications of any assignment for the University, including particular regard to any pre-existing or likely internal needs or commitments to third parties, and reserving the right not to assign. A recommendation will be made to the Provost and DVC&VP(R) who will consider the request. If the request is approved, a written agreement must be entered into between the Originator(s) and the University, addressing IP assignment and rights of use, costs and risks of [commercialisation](#), and revenue distribution.
- j) Negotiate and execute agreements with third parties in relation to University IP, unless otherwise determined by the Provost and DVC&VP(R).

Responsibility: Provost and DVC&VP(R)

- k) Where it has been decided not to protect or [commercialise](#) the disclosed IP, as per Procedure 1(i), consider requests for the University to assign the IP to the Originator(s), taking into account the related recommendation of the Director, University of Adelaide Enterprise; and the requirements of the University of Adelaide Act 1971, Section 9 relating to wholly owned entities controlled by the University, and/or significant commercial activities.

Responsibility: Heads of School/Branch

- l) Consider requests from staff to:

- (i) use pre-existing IP disclosed under procedure 1(d); or
- (ii) use [teaching materials](#) in any subsequent employment.

2. Rewarding Originators

Responsibility: *Director, University of Adelaide Enterprise*

- a) Subject to Procedure 2(b) and any specific agreement or exceptions in this Policy, distribute any [Net Revenue](#) in the following proportions:
 - i. one-third to the Originator. If there is more than one Originator, the proportion will be shared equally among all Originators, unless there is a written agreement between them stipulating a different split;
 - ii. one-third to the Originator's School or administrative unit for strategic investment in research, as agreed by the Executive Dean of the relevant Faculty; and
 - iii. one-third to the Provost and DVC&VP(R) for strategic investment in research.

This distribution will continue regardless of whether the Originator(s) remain employed by, or are students of, the University. If there is any significant restructure affecting the existence or composition of the Originator's School or administrative unit, then the Provost and DVC&VP(R) will determine how that portion of the funding will be allocated.

- b) Subject to any specific agreement, if there is an investment of cash into the development of IP that is agreed between the Originator(s), the Originator's School or administrative unit and the Provost and DVC&VP(R), then the IP will be valued at the point of that investment, and the distribution proportions specified in Procedure 2(a) will be adjusted accordingly, in accordance with the determination of the Provost and DVC&VP(R), and in a way that is proportionate to the investment from any or all of those three groups. The resultant adjusted distribution splits will be recorded in writing at the time of the investment.

3. Students

Responsibility: *Director, University of Adelaide Enterprise*

- a) Where IP is embodied in a student thesis (or confidential appendices to it), work with the University to ensure that any confidentiality or embargo requirements are limited to no longer than 12 months, except where this is prevented by the circumstances of protection, [commercialisation](#) or obligations to a third party.

4. Titleholders and Visitors

Responsibility: *All titleholders and visitors*

- a) Disclose to University of Adelaide Enterprise and the relevant Head of School any IP with commercial potential that they create in the course of their role with the University.
- b) Retain sufficient records, materials and data to justify the outcomes of any research, and to defend those outcomes if challenged.

Responsibility: *Staff and Heads of School*

- c) Consult with University of Adelaide Enterprise on appropriate arrangements and agreements where titleholders or visitors are to be engaged on a project:
 - i. where the IP is likely to have or has commercial potential;
 - ii. which builds upon pre-existing University IP or which is funded by the University; or
 - iii. that is being carried out by the University for, or in conjunction with, a third party.

Responsibility: *Heads of School*

- d) To ensure that all titleholders and visitors working in your area have accepted the terms of this Policy.

Responsibility: *Director, University of Adelaide Enterprise*

- e) Assist Heads of School in case-by-case negotiations on the [commercialisation](#) of IP created by titleholders or visitors over which the University asserts ownership, and an equitable sharing of any [Net Revenue](#) from the commercialisation of that IP. Negotiations will include the employer of the titleholder or visitor.

5. Resolution of Disagreements

Where a disagreement arises concerning any IP-related matter associated with this Policy (including but not limited to matters of inventorship or share of ownership), it should be referred to the Director, University of Adelaide Enterprise, (and the Manager, Human Resources, for staff members) who will notify the Provost and DVC&VP(R) and work with the parties in dispute to attempt to find a mutually acceptable solution. If the IP-related matter is not resolved within 6 weeks of its reference to the Director of University of Adelaide Enterprise, then the Provost and DVC&VP(R) will appoint an appropriate expert to determine a resolution. The expert must act as an expert and not as an arbitrator, and the determination of the expert will be final and binding as between the parties.

For any dispute not covered by such expert determination:

- a) staff may use the Dispute Settlement Procedures or the Staff Grievance clause each of which is contained in the [University of Adelaide Enterprise Agreement 2010-13](#) (as amended or replaced); and
- b) students may use the University's [Student Grievance Resolution Process](#).

Nothing in this Policy affects any available options for general legal redress.

DEFINITIONS

'Administrative materials' are those items created for the administrative or business functions of the University. These include, but are not limited to, letters, memos, templates, handbooks, systems software, advertising material and internal reports.

'Commercialisation' means any process to transfer technology, sell, assign, license, sub-license, or otherwise trade in or deal with IP to gain or attempt to gain financial or other benefit, and commercialise and commercialising have corresponding meanings.

'Commercialisation costs' means all costs relating to commercial development (including legal costs), IP protection (including registration costs and attorney fees) and marketing.

'Intellectual property' ('IP') means the legal rights which may be claimed for certain intellectual creations. Specifically, it includes:

- Copyright, which protects computer software; teaching materials; scholarly written, artistic, dramatic and musical works; and other works including film and sound recordings. Refer to the *Copyright Act 1968 (Cth)*;
- Patents, which protect new inventions and processes in areas such as software, biotechnological and engineering advances, and business methods. Refer to the *Patents Act 1990 (Cth)*;
- Confidential information, consisting of know-how, trade secrets or other proprietary information and background knowledge. This is protected under Common Law;
- Plant breeder's rights to protect distinct, uniform and stable new plant varieties that have been bred. Refer to the *Plant Breeder's Rights Act 1994 (Cth)*;
- Design Rights to protect the shape or appearance of manufactured goods. Refer to the *Designs Act 2003 (Cth)*;
- Trademarks comprising the signs and trading identities of businesses. See the *Trade Marks Act 1995 (Cth)* for registered marks. Unregistered trademarks are protected under Common Law; and
- Circuit Layout Rights to protect the configuration of electronic circuits in integrated circuit products or layout designs. Refer to the *Circuit Layouts Act 1989 (Cth)*.

'Moral Rights' are those personal rights conferred by Part IX of the *Copyright Act 1968 (Cth)* in relation to literary, dramatic, musical or artistic works and cinematograph films. These are rights for creators to be attributed as the creator of their work; take action if their work is

falsely attributed as being someone else's work or is altered by someone else but attributed as if it were unaltered; and/or take action if their work is distorted or treated in a way that is prejudicial to their honour or reputation.

'Net Revenue' means cash revenue from [commercialisation](#) of IP (including royalties, licence fees, lump sums, milestone payments and revenue from sale of shares) less [commercialisation costs](#), but before tax.

'Originator' means the inventor, breeder, author, composer, sculptor, designer, compiler, film-maker, programmer, photographer or any other person who creates in any way IP which is the subject of this Policy.

'Plant Breeder's Rights' are exclusive commercial rights to a registered plant variety administered under the *Plant Breeder's Rights Act 1994*.

'Scholarly or Creative work' means journal articles, conference papers and proceedings, books, recorded performances, radio scripts, as well as artistic, musical, dramatic or other creative works produced during the course of a staff member's employment. For the purposes of this Policy it does not include work that is a computer program, teaching materials or administrative material.

'Teaching materials' are materials in any form prepared for the teaching of a course or program that is offered or intended to be offered by the University. They include curriculum outlines, lectures, lecture notes and material, syllabi, study guides, assessment materials, images, web content, course software, etc.

RMO File/Document Number	2008/2345
Policy Custodian	Provost and Deputy Vice-Chancellor and Vice-President (Research)
Responsible Officer	Provost and Deputy Vice-Chancellor and Vice-President (Research)
Endorsed by	
Approved by	Council on 23 July 2012
Related Documents and Policies	Copyright Policy Conflicts of Interest Policy Responsible Conduct of Research Policy Research Grants, Contracts and Consultancies Policy Legal Compliance Framework Australian Code for the Responsible Conduct of Research National Principles of Intellectual Property Management for Publicly Funded Research University of Adelaide Enterprise Agreement 2010-13 (as amended or replaced) Guidelines for Ethical Research in Australian Indigenous Studies
Related Legislation	Copyright Act 1968 (Cth) Patents Act 1990 (Cth) Plant Breeder's Rights Act 1994 (Cth) Designs Act 2003 (Cth) Trade Marks Act 1995 (Cth) Circuit Layouts Act 1989 (Cth)
Superseded Policies	Intellectual Property Policy (2005)
Date Effective	23 July 2012
Next Review Date	31 July 2015
Contact for queries about the Policy	Director, University of Adelaide Enterprise