

Intellectual Property Policy

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1. Purpose

- a. Intellectual property (IP) refers to creations of the mind which can be legally owned and therefore protected from unauthorised use by others. As a research and education institution, Flinders University generates IP every day.
- b. Some forms of IP require formal application and examination before an ownership right capable of protection can be claimed. These include: inventions protected by patents or plant breeder's rights; trademarks; and industrial designs. Other forms of IP are protected at the point of creation. These include: scholarly and creative works protected by copyright; and proprietary information such as know-how or trade secrets protected by the common law.
- c. This policy sets out the University's approach to IP generated in the course of its education and research activities, so that the University can:
 - i. add impact and value to its IP for the benefit of the University, industry, governments, research sectors and society in general
 - ii. provide incentives for staff, academic status holders and students to create valuable IP through rewarding their innovation
 - iii. protect and enhance the interests of the University, and its staff, academic status holders and students, and
 - iv. be compliant with the University's Enterprise Agreement, clause A10.

[This policy does not explain the application or operation of the various laws which apply to IP protection.]

2. Scope

This policy applies to all University staff, students and academic status holders, and to all IP dealings arising on or after the date of approval of the policy.

3. Definitions

Academic status holders	Those awarded academic status under the Academic Status Policy
Creator	The person who is recognised as the creator, originator, author, inventor (or similar) of IP under applicable laws
Scholarly and creative works	Copyright works intended for academic publication or presentation, excluding computer programs, education materials, corporate records, or administrative material
Teaching materials	Any material in any medium prepared for the purpose of teaching at the University, and made available to students in connection with their course

4. Ownership

4.1. University assertion of ownership

- a. The University owns all IP:
 - i. created by staff members:
 - in the course of their employment with the University
 - solely or primarily through University-provided funding, facilities or resources and/or through pre-existing University-owned IP
 - or both
 - ii. created by academic status holders:
 - through University-provided funding, facilities or resources and/or through pre-existing University-owned IP
 - where the IP is a component of IP generated by a team which includes staff members
 - or both
 - iii. assigned to the University by others as a pre-condition of participation in a University-related activity
—unless there is a specific written agreement to the contrary.
- b. To the extent necessary to give effect to clause 4.1.a. above, staff members and academic status holders irrevocably and unconditionally assign to the University their right to any IP created during their employment, or created using funding, facilities or resources provided by the University.
- c. The University acknowledges that, in law, IP created by an enrolled student in the course of their University studies is owned by the student, unless there is a specific written agreement to the contrary.
- d. The University may grant or assign rights in IP it owns on such terms and conditions as it deems fit.

4.2. Scholarly and creative works

- a. The University grants the [creator](#) of any [scholarly or creative work](#) that it owns:
 - i. a transferable, non-exclusive, royalty-free, perpetual, irrevocable, worldwide licence to use, adapt or modify the work for the purposes of publication, teaching, academic research and personal promotion by the creator, on condition that:
 - the creator acknowledges that the scholarly or creative work was created at the University, and
 - any contract to deal with the work is in the name of the creator, not the University.

- ii. a right to grant an exclusive licence for the work or to assign copyright in the work to an academic publisher.
- b. This grant does not apply where the work:
 - i. has been specifically commissioned by the University, or
 - ii. is subject to an overriding contractual obligation with a third party, or
 - iii. relates to IP which is being commercialised and confidentiality provisions apply.
- c. Where the work is created jointly, these rights may be exercised by the joint creators together, but not separately.
- d. The University takes no responsibility for the use of scholarly and creative works by the creators under this clause.

4.3. Teaching materials

- a. Following application by a [creator](#) of [teaching materials](#) who is leaving their employment or association with the University, an [authorised delegate](#) may grant a licence to the creator to use those teaching materials.
- b. Any such licence will be:
 - i. a non-transferable, non-exclusive, royalty-free, revocable, worldwide licence, and
 - ii. granted on such conditions that the authorised delegate chooses, except that the following conditions are mandatory, namely that the creator:
 - uses the educational materials only for teaching and research purposes at other educational institutions, but not to compete directly with the University
 - does not sublicense or assign such educational materials to others
 - does not use the educational materials for commercial purposes or to generate royalties or licence fees, and
 - removes all Flinders University references from the materials.
- c. A licence may not be granted if the teaching materials:
 - i. include contributions by others
 - ii. were specifically commissioned by the University
 - iii. are subject to an overriding contractual obligation with a third party, or
 - iv. are related to IP which is being commercialised.

4.4. Student-owned IP

- a. As a pre-condition of participating in a particular activity, the University may require a prospective or enrolled student to:
 - i. assign to the University ownership of any IP, except the student's thesis and any other work submitted for assessment, arising from the student's participation in a Flinders University educational or research activity, and
 - ii. adhere to any related obligations.
- b. Such an assignment may only be required if the activity:
 - i. has, or is likely to have, potential for commercial exploitation
 - ii. is likely to result in IP which is jointly created by the student's supervisor or other University staff or academic status holders
 - iii. builds upon pre-existing University-owned IP

- iv. is the subject of an agreement or activity involving the University and a third party (e.g. a placement or externally funded scholarship or research activity), or
 - v. involves the creation of teaching materials for future use by the University.
- c. The [Student Research IP Procedures](#) apply to the process of assignment.
- d. If the student does not agree to an assignment of IP to the University, the student will not be permitted to participate in the activity, and must select an alternative activity that meets the requirements of their course and is not covered by clause 4.4.a.
- e. Where an enrolled student is also a staff member, and the subject matter of the student's study is similar to the subject matter of the work for which the student is employed, the student's IP will be treated by the University as IP produced in the course of employment, as per clause 4.1.a.

4.5. Moral rights of creators

- a. Nothing in this policy overrides the moral rights of a creator of copyright work as provided by the Copyright Act 1968 (Cth).
- b. The University may require a student, academic status holder or staff member to waive some or all of their moral rights in the outputs intended to be created in connection with a University activity, where:
 - i. a contract with a third party requires such a waiver, or
 - ii. the University otherwise reasonably considers this to be necessary
 —as a pre-condition of participating in the relevant activity.

5. Use of University IP

- a. Whether and how to maximise the commercial, societal or strategic value of any University IP is for the University to determine in its absolute discretion.
- b. Only [authorised delegates](#) are permitted to act on behalf of the University to assign, license, protect, enforce, commercialise or otherwise deal with University IP.

6. Identifying and maximising value of research IP

- a. When research by staff and academic status holders results in the creation of IP which they believe has commercial value, the IP must be reported in accordance with the [Research IP Management Procedures](#).
- b. Creators must be consulted when strategies to maximise the value of research IP are being considered.
- c. Maximising value of University research IP may not necessarily involve direct returns, but may include:
 - i. leveraging the IP to attract and develop research relationships with industry or government partners, through different licensing and/or patenting models
 - ii. protecting it for the University's sole use, or
 - iii. developing a spin-out company to commercialise it on behalf of the University.
- d. If the University makes a decision that research IP it owns is not of commercial or strategic value to it, it may at its discretion decide whether and on what terms it may permit others, including the creators, to deal with the IP.
- e. At any stage in a commercialisation process, the University may determine that it is not in the University's best interests to proceed with commercialisation.

7. Obligations on creators of research IP

Where commercialisation of University-owned research IP is contemplated, creators must:

- a. follow any directions necessary to support the University's commercialisation objectives, and

- b. act in a manner which is consistent with:
 - i. maximising the opportunity to protect or commercialise the IP
 - ii. the [Research IP Management Procedures](#), and
 - iii. any University obligations to third parties.

8. Sharing commercialisation returns from research IP

Direct returns arising from the commercialisation of University-owned research IP created through research activities undertaken by academic staff or academic status holders, or by students or others who have assigned their IP ownership to the University, will be shared with the creator(s) in accordance with the [Research IP Management Procedures](#).

9. Traditional indigenous knowledge

Where traditional indigenous knowledge is used in the production of University IP, indigenous cultural and IP rights must be protected in accordance with the Australian Institute for Aboriginal and Torres Strait Islander Studies [Guidelines for Ethical Research in Australian Indigenous Studies](#).

10. Authorities

Delegate	Authority
Deputy Vice-Chancellor (Research)	<ul style="list-style-type: none"> a. Determine issues of authorship, creation and invention of IP deriving from research activity, as required. b. Determine whether and how to maximise the commercial, societal or strategic value of University IP deriving from research activity, including any determinations specified in the Research IP Management Procedures. c. Apply for protection or registration of, or take any other steps necessary or desirable for securing, maintaining and protecting in Australia or elsewhere throughout the world any IP deriving from research activity which is owned by or licensed to the University. d. Sign documents for, and act on behalf of, the University in dealings relating to University-owned IP deriving from research activity, including licensing. e. Make all determinations specified in the Research IP Management Procedures. f. Sub-delegate to other University officers, committees or entities any of the above authorities, in accordance with the Delegations Policy.
Deputy Vice-Chancellor (Students) (or sub-delegate)	<ul style="list-style-type: none"> g. Approve use of teaching materials – created by a staff member – in subsequent employment, under clause 4.3.
Director of Library Services (or sub-delegate)	<ul style="list-style-type: none"> h. Approve, in consultation with the relevant creator or custodian where appropriate, requests for the non-commercial use of University-owned copyright material by educational or not-for-profit organisations.
Vice-Chancellor (or sub-delegate)	<ul style="list-style-type: none"> i. Determine any IP ownership and related issues not deriving from research activities and not covered by section 4.3 or 10.h, above.

11. Supporting procedures

Supporting procedures are part of this policy and provide additional detail to give practical effect to the policy principles.

[Research IP Management Procedures](#)

[Student Research IP Procedures](#)

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