

# UNIVERSITY OF THE SUNSHINE COAST

## POLICY ON INTELLECTUAL PROPERTY

### Introduction

This policy establishes the rights and obligations of the staff and students of the University of the Sunshine Coast (University) in relation to intellectual property.

The policy is formulated to create an equitable balance between the rights of the originators of intellectual property and the rights and interests of the University. The maintenance of the principles of “academic freedom” and simplicity of administration are essential elements of the policy.

The policy draws substantially on the AVCC Discussion Paper on Intellectual Property (1993), the model document issued by the NTEU (1994) and the policy developed by the University of Canberra (1995).

### 1. General background

- 1.1 The University encourages an environment in which teaching, learning, scholarship and research flourish. The University adheres to the principle that knowledge and ideas should be made available for the benefit of the entire community. Where this principle conflicts with commercial considerations, the University will seek to resolve the conflict to ensure public dissemination of its activities without undue delay and with regard to the wishes of the originator.
- 1.2 The University will create and develop intellectual property as a natural consequence of its strategic plan. The University recognises the right of originators of intellectual property to participate in and influence decisions regarding the use of intellectual property including its commercialisation.
- 1.3 This policy provides a mechanism for the commercialisation of intellectual property created by the staff and students of the University. The University recognises that originators are entitled to an equitable share of any financial returns from such commercialisation.
- 1.4 Staff and students of the University can not enter agreements, contracts or consultancies in any form which detract from the intellectual property rights of the University other than through the processes outlined in this document.

### 2. Objectives

The objectives of the University with respect to intellectual property are to:

- promote and implement the objectives of the University’s strategic plan;
- foster a corporate and community identity and a collegiate environment within the institution;
- protect the integrity and welfare of staff and students;
- provide incentives for staff and students to develop and apply intellectual activities;
- provide staff and students with fair and reasonable recognition and remuneration;

- provide a resource for industry, governments and the community;
- encourage and develop institutional growth, progress and success through ventures with private and public enterprises;
- ensure judicious use of public funds; and
- obtain an appropriate return from the provision of University facilities, resources and services.

### 3. Definitions

For the purpose of this policy:

**“Course materials”** means published materials used in the provision of lectures, tutorials, seminars, workshops, field classes, laboratory classes and other teaching activities conducted by the University and may include published overhead transparencies, slides, photographs, maps, diagrams, handbooks, manuals, unit outlines, exercises, promotional and advertising brochures, and multimedia items.

**“Intellectual property”** includes any proprietary right arising from:

- Patents under the *Patents Act 1990*;
- Information that is subject to an employee’s duty of fidelity to the employer;
- Copyright vesting by virtue of the *Copyright Act 1968* in literary works (including computer programs), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performance and non-copyright protection for certain performances;
- Trade marks registered under the *Trade Marks Act 1955*;
- Unregistered trade marks used or intended for use in businesses;
- Designs registered under the *Designs Act 1906*;
- New plant varieties under the *Plant Variety Rights Act 1987*;
- Circuit layouts (computer chips) under the *Circuits Layout act 1989*;
- Trade secrets and confidential information protected by equity or the common law; and
- All other rights resulting from intellectual activity in the industrial, commercial, scientific, literary and artistic fields.

**“Intellectual property officer”** means the Vice-Chancellor or a person appointed by the Vice-Chancellor who has responsibility on the behalf of the University for the implementation and conduct of this intellectual property policy.

**“Interest”** in relation to the commercial exploitation of intellectual property includes full or partial ownership or an exclusive licence over that intellectual property.

**“Originator”** includes an author, creator or inventor of intellectual property.

“**Staff member**” means a person who is a member of the staff of the University, whether full-time, part-time, contract, sessional or casual.

“**University**” means the University of the Sunshine Coast its legal heirs and successors.

#### 4. Ownership

- 4.1 The University claims ownership of all intellectual property created by a staff member in the course of fulfilling his or her contract of employment with the University.
- 4.2 The University agrees that originators retain copyright in any materials, other than course materials, created by the originators in the course of fulfilling their contract of employment with the University except where an agreement to the contrary has been negotiated between the University and the staff member.
- 4.3 In the case of course materials created by an originator in the course of fulfilling his or her contract of employment with the University, the University agrees to grant to the originator a royalty-free, non-exclusive and irrevocable licence to use the intellectual property in those materials for teaching, research and professional purposes.

- 4.4 Enrolled students of the University own the intellectual property created by them in pursuit of their studies but the University may assert an interest in that intellectual property where:
- generation of the intellectual property has involved substantial use of University resources and/or services beyond that which is ordinarily provided to students; or
  - generation of the intellectual property has resulted from use of pre-existing intellectual property owned by the University; or
  - the intellectual property forms part of intellectual property generated by a team of staff and students of which the student is directly or indirectly a member; or
  - the intellectual property has been generated as the result of project specific funding provided or obtained by the University; or

Where the University asserts an interest under section 4.4 ownership will be negotiated on a case by case basis in accord with the principles of this document.

- 4.5 Where the University asserts or has an interest in the commercial exploitation of intellectual property created by an originator, the University will seek to protect the rights of the originator by:
- offering a proportion of the commercial returns resulting from the commercial exploitation of the intellectual property as outlined in section 7;
  - due acknowledgment and attribution; and
  - offering an input into the development of the intellectual property.
- 4.6 Where the University asserts or has an interest in the commercial exploitation

of intellectual property generated by students under section 4.4, the University will ensure:

- that the claim will not be allowed to interfere with the assessment of the student's academic performance or their academic progression; and
- that the student is treated in accord with the provisions of this document.

4.7 Normally the University would not consider assisting a student to patent an invention or register other intellectual property created by the student unless the student was prepared to assign the patent rights or other intellectual property rights to the University in accordance with this policy. If a student is a member of a team responsible for a patentable invention, the student is to be considered as a member of staff in the consideration of intellectual property patent rights.

4.8 Section 4.7 also will apply to visitors undertaking research or other activities at the University.

4.9 Where the University is the owner of intellectual property created by an originator, the University will assign its rights to the originator if:

- the Intellectual Property Officer decides that the University will not become involved in the commercial exploitation of the intellectual property;
- the Intellectual Property Officer fails to make a decision on the University's involvement in commercial exploitation, as required by section 6.2; or
- the University, having decided to become involved in commercial exploitation, fails to commence any steps necessary to do so within a period of 180 days from the date of notification under section 6.1.

## **5. Use by non-owners**

This section outlines the conditions associated with the provision of a licence:

- to the University where the University has assigned its rights to intellectual property to the originator;
- to the originator where the University is the owner of intellectual property as described in this document.

5.1 Where the University is the owner of intellectual property created by an originator, the University agrees to grant to the originator a royalty-free, non-exclusive and irrevocable licence to use the intellectual property for teaching, research or professional purposes.

- 5.2 Where an originator is the owner of intellectual property created by the originator in the course of fulfilling the originator's contract of employment with the University, the originator agrees to grant to the University without charge a royalty-free, non-exclusive and irrevocable licence to use the intellectual property for teaching, research or professional purposes. If the University obtains any financial return from such use, it will be distributed according to the provisions of section 7.
- 5.3 Any licence granted pursuant to this section will be subject to the following conditions:
- (i) the licensee will not do anything that could jeopardise the rights of the licensor including actions that could jeopardise the protection or enforcement of the licensor's rights and commercial exploitation such as the disclosure of confidential information or know-how without the consent of the licensor;
  - (ii) the licensee will not compete with the licensor in the commercialisation of the intellectual property; and
  - (iii) the licensee shall not assign, licence or sub-licence or otherwise create rights or obligations for the intellectual property without the express written consent of the licensor.

## **6. Commercial exploitation and patenting**

- 6.1 Where originator(s) of intellectual property take steps or wish to negotiate with a third party for the commercial exploitation of intellectual property in which the University has an interest, the matter must be notified immediately to the Intellectual Property Officer.
- 6.2 Once the Intellectual Property Officer is notified under section 6.1, the Intellectual Property Officer must decide within 90 days whether or not the University wishes to become involved in the process of commercial exploitation.
- 6.3 In making a decision under section 6.2, the Intellectual Property Officer must consult in confidence with the originator and other relevant parties.
- 6.4 In making a decision under section 6.2, the Intellectual Property Officer will take into account:
- the direct and indirect contribution made by the University to the development of the intellectual property;
  - the nature of the intellectual property and the extent of patent or other protection desirable;
  - whether the grant of patent or other protection will assist the development and subsequent commercial exploitation of the intellectual property.
  - whether it is desirable for the University to maintain an interest in the further development of the intellectual property; and
  - the probable commercial returns to the University.

6.5 If the Intellectual Property Officer is advised or believes that the confidentiality of certain information must be maintained for the intellectual property to be protected or successfully exploited, the Intellectual Property Officer must:

- conduct all consultation in confidence; and
- recommend a time and procedures for the release of the intellectual property.

6.6 All decisions and the associated reasons taken by the Intellectual Property Officer must be reported to the University Council.

## **7. Distribution of financial returns**

7.1 Where the University derives any financial return from the commercial exploitation of intellectual property, the University will deduct its direct costs for developing, creating, protecting, marketing and administering the intellectual property and distribute the net revenues received by the University in the proportions 50% Originator : 25% Faculty : 25% University or as agreed with the originator(s) prior to the development of the intellectual property.

7.2 Where more than one originator is involved in the creation of intellectual property the originators must decide how their share of annual net revenue is to be divided and inform the Intellectual Property Officer of their decision.

## **8. Agreements with third parties**

8.1 The University may enter an agreement with another party which provides for the control, ownership and exploitation of intellectual property. Where ownership of the intellectual property does not rest fully with the University, the consent of the originator(s) must be obtained before negotiations are commenced.

8.2 In negotiating such an agreement, the University must as far as practicable use its best endeavours to ensure that the:

- originator(s) in question are consulted; and
- terms of the agreement are consistent with the principles set out in this policy.

8.3 An agreement reached by the University with a third party might include actions such as assigning the rights to the intellectual property to the third party in return for an up-front payment or the payment of royalties.

## **9. Dispute Resolution**

9.1 If a dispute arises in relation to the contents or operation of this policy or any related matter, the Intellectual Property Officer must appoint a mediator who can assist the parties in resolving their dispute.

9.2 If such a dispute cannot be resolved through the assistance of a mediator, the Intellectual Property Officer must appoint an arbitrator to investigate and adjudicate the matters in dispute.

9.3 The arbitrator must adopt procedures that ensure that each party is given a fair hearing. Should a student or staff member consider that just and fair procedures have not been followed they may seek redress through the Vice-Chancellor.

- 9.4 In selecting a mediator or arbitrator, the Intellectual Property Officer must choose a person who is acceptable to all parties. If the parties cannot agree within 30 days, the Vice-Chancellor must appoint the mediator or arbitrator.

## **10. Information and education**

- 10.1 The University will establish an intellectual property education program with the following objectives:
- to alert staff and students to their rights, responsibilities and opportunities in relation to intellectual property;
  - to alert staff and students to any changes in this policy; and
  - to generate a better understanding of intellectual property issues.
- 10.2 The University will seek the cooperation of the Student Union in providing independent advice for students on intellectual property matters and the University will advise students to seek such independent advice before they commence activities that may create intellectual property. The University will include references to this policy in the relevant documentation provided to graduate students.
- 10.3 The Intellectual Property Officer will be required to:
- oversee the implementation of this policy especially the requirements related to information and education set out in this section;
  - establish and maintain a record of intellectual property agreements, rights and obligations which exist when a member of staff commences employment with the University;
  - conduct a review of this policy at periodic intervals and as circumstances demand; and
  - provide generally advice to the University Council on intellectual property issues.

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