



Intellectual Property Policy

Date Policy will take effect	23 June 2006		
Date of Next Review	June 2009		
Contact Officer Title	Managing Lawyer, Legal and Commercial Unit	Name and Email Address	Angela Taylor angelata@UOW.edu.au
Reference/related legislation and policies	Student Assignment of Intellectual Property Policy Commercialisation Revenue Policy Copyright Policy http://www.library.UOW.edu.au/copyright/copyrightpolicy.html Grievance Resolution Procedures http://staff.UOW.edu.au/eed/grievanceresolution.html Records Management Policy http://staff.UOW.edu.au/personnel/policy/recordmgmt.html <i>Patents Act 1990</i> (Cth) <i>Copyright Act 1968</i> (Cth) <i>Trade Marks Act 1995</i> (Cth) <i>Designs Act 2003</i> (Cth) <i>Plant Breeder's Rights Act 1994</i> (Cth) <i>Circuit Layouts Act 1989</i> (Cth) National Principles of Intellectual Property Management AV-CC Ownership of Intellectual Property in Universities		
Supporting documents and forms of this policy	IP Notification Form		
Supporting procedures/guidelines for this policy	Intellectual Property Policy Guidelines		
Website Address			

1. Purpose of the Policy

This policy applies to all Staff Members and Students (under-graduate and post-graduate) of the University of Wollongong (UOW). It may also apply to other persons by agreement. This policy provides guidance on the approach taken by UOW in relation to Intellectual Property (IP), including its ownership, protection and exploitation. It is also intended that this policy will guide UOW's interactions with research collaborators, such as funding bodies, other research institutions and industry partners.

This policy is consistent with the National Principles of Intellectual Property Management for Publicly Funded Research and has been guided by the Australian Vice-Chancellors' Committee publication "*AV-CC Ownership of Intellectual Property in Universities*". A set of explanatory Guidelines accompanies this policy.

This policy, along with the Commercialisation Revenue Policy and Student Assignment of Intellectual Property Policy, form UOW's intellectual property framework.

2. Background

UOW's vision is:

“to advance our international reputation as an outstanding research and teaching University distinguished by excellence, leadership and innovation in the quality of our research, in Student learning and achievement, and in engagement with our communities.”

In accordance with UOW's vision, IP developed by UOW researchers should benefit:

- the wider community, in terms of technology transfer and engagement;
- UOW itself, in terms of its own reputation (distinguishing UOW through innovation and excellence in research outcomes);
- individual researchers, including Students, in terms of career advancement and achievement; and
- all three of the above, through potential financial returns from Commercialisation of IP.

Since UOW provides an environment that 1) encourages researchers to develop innovative ideas and 2) supports Commercialisation of these ideas, UOW wishes to share in the benefits arising from Commercialisation of IP developed by UOW researchers. UOW's share in any financial gains from research Commercialisation will be re-invested in future generations of UOW researchers. This policy is intended to provide a personal incentive and reward for UOW researchers who have developed IP with commercial value. This policy also addresses IP that may have reputational or other value, rather than commercial value.

3. Definitions

In this Policy, the following definitions are used. References to the singular include the plural and references to the plural include the singular.

Administration Material	means any material or documentation in any format (such as policies, procedures, business plans, contracts, subject outlines, course outlines, course handouts, examination documents, funding applications, reports, promotional brochures, business processes, software) that has been developed for the purposes of UOW administration, performance evaluation, marketing, and legal services.
Commercialise or Commercialisation	means to use, apply, publish, manufacture, assign, licence, sub-licence, franchise, exploit, market, or otherwise use or dispose of the IP for the purpose of generating financial or other commercial returns.
Commercialisation Expectation	means where UOW has an expectation that it will manage Commercialisation of the IP. UOW will not have an expectation to commercialise IP that is solely developed by a Student and is not subject to a contract with an external organisation and does not form part of a larger project where UOW does have a Commercialisation Expectation and does not involve pre-existing IP owned or licensed to UOW.
Commissioned Work	means a work in which Copyright subsists that UOW specifically engages a Staff Member to create outside the scope of the employee's duties and such an engagement is called a commissioned work.
Copyright	has the meaning ascribed to that term in the <i>Copyright Act 1968</i> as amended by the <i>Copyright Amendment (Moral Rights) Act 2000</i> .
Creators	means those persons who produce, invent, design, enhance, generate, discover, make, originate or otherwise bring into existence IP.
Creative Material	includes paintings, sculptures, manuscripts, prose works (fiction and non-fiction), poetry, music, production, performances, oral work, Australian Indigenous beliefs or other creative works in whatever format, or combinations thereof.
Education Purposes	means for the purposes of teaching and does not mean for the

	purposes of Commercialisation.
Exceptional Use of UOW Resources	means resources of UOW which include laboratories, funds, services, equipment, computer laboratories, media equipment, consumables, chemicals, staff time and support staff in excess of those normally used or available to Students. A Student could expect to normally have access to a computer for word-processing purposes and access to UOW's library.
IP	means intellectual property, which includes rights (including rights of registration or application for registration) relating to: <ul style="list-style-type: none"> a. literary, artistic, musical and scientific works; b. computer programs and algorithms; c. multimedia subject matter; d. performances of performing artists, phonograms and broadcasts; e. inventions in all fields of human endeavour; f. scientific discoveries; g. industrial designs; h. trade secrets and confidential information; i. trademarks, service marks and commercial names and designations; j. plant varieties; k. patents; and l. circuit layouts; but does not include any Moral Rights.
Moral Rights	has the meaning ascribed to that term in the <i>Copyright Act 1968</i> as amended by the <i>Copyright Amendment (Moral Rights) Act 2000</i> and recognises three types of moral rights: <ul style="list-style-type: none"> a. an author's right to be identified as the author of a work; b. the right of an author to take action against false attribution; and c. an author's right to object to derogatory treatment of her or his work that prejudicially affects their honour or reputation.
Research Purposes	means use in research and does not include use for Commercialisation.
Scholarly Material	includes any article, book, thesis, manual and any digital or electronic version of these that contains material written by Staff Members or Students based on their scholarship, learning or research, but does not include work that is a computer program, Teaching Material, Creative Material or Administration Material.
Staff Member	means all persons appointed to the academic or general staff of UOW, whether they hold full-time, part-time, casual or conjoint appointments.
Student	means a person: <ul style="list-style-type: none"> (i) who has been accepted for admission to or enrolled in any course or program offered at, or in conjunction with, the University of Wollongong or the Wollongong University College; or (ii) whose body of work, completed while so enrolled (e.g. a research thesis), is still under examination.
Teaching Material	means all works in which copyright subsists which are used by a Staff Member for teaching purposes and includes all information, documents, materials or digital items in any form created or used for the purposes of teaching and education at UOW. This includes but is not limited to lecture notes that are made available to Students, computer-generated or overhead projector presentations (such as PowerPoint presentations), assignments, tutorial problems and solutions, photographs, images, sound recordings, video recordings, musical scores, and the related contents of course

	websites.
UOW	means the University of Wollongong.

4. Ownership of Intellectual Property (Other than Teaching Material, Creative Material and Scholarly Material)

The law is that an employer owns the IP created by an employee in their course of employment. Therefore, in the absence of any agreement to the contrary signed by an authorised delegate of UOW, UOW will own any IP created by Staff Members in their course of employment at UOW (other than Teaching Material, Creative Material and Scholarly Material, which are dealt with separately in this policy).

UOW will ask Students to assign their IP to UOW, in the circumstances outlined in UOW's Student Assignment of Intellectual Property Policy.

Creators will have the right to use the IP for Research Purposes.

5. Ownership of Copyright in Teaching Material

In the absence of any agreement to the contrary signed by the Creator and an authorised delegate of UOW, the Creator will own the Copyright subsisting in their Teaching Material.

Each Staff Member, by virtue of their employment and this Policy, grants to UOW, for use and dissemination in the delivery of UOW courses and degrees, a non-exclusive, royalty-free, perpetual licence to use Teaching Materials that are:

- brought with the Staff Member upon employment commencing at UOW and used in the course of their employment at UOW; or
- developed during the course of the Staff Member's employment at UOW.

In its use of Teaching Material, UOW will consider the reputation of the Creators. UOW will use its best endeavours to consult the creators on updates, the appropriateness of continued use of material, and attribution of material so used in UOW course and subject delivery.

Each Staff Member retains Copyright in the Teaching Material. Staff Members may freely grant licenses to others subject to the non exclusive license to UOW.

Each Staff Member may also, if the Staff Member so chooses, assign Copyright. Any such assignment will operate subject to the non exclusive license to UOW.

6. Ownership of Copyright in Commissioned Works

Where UOW engages a Staff Member to create a Commissioned Work:

- to the extent to which the Commissioned Work reproduced Teaching Material, section 5 (Ownership of Copyright in Teaching Material) applies;
- to the extent to which Commissioned Work reproduced Creative Material or Scholarly Material, section 8 (Ownership of Creative Material and Copyright in Scholarly Material) applies; and
- to the extent to which the Commissioned Work contains new work, the Copyright in the new work vests in UOW.

7. Ownership of Administration Material

UOW will own any Administration Material developed by Staff Members during their course of employment at UOW.

8. Ownership of Creative Material and Copyright in Scholarly Material

In the absence of any agreement to the contrary signed by the Staff Member or Student and an authorised delegate of UOW, Staff Members and Students will retain ownership of Creative Material and the Copyright in Scholarly Material that they create in their course of employment or enrolment at UOW.

9. Moral Rights

UOW recognises the Moral Rights of the Creators of IP in accordance with the *Copyright Act 1968* (Cwlth). UOW will use its reasonable efforts to assist authors in asserting their Moral Rights, which are personal rather than proprietary in nature and as such cannot be sold, licensed or assigned.

10. Assignment of Intellectual Property

Staff Members will execute, in a timely manner, all assignments of IP necessary to give effect to the ownership provisions set out above.

UOW supervisors electing to supervise a Student on a project that is likely to have Commercialisation Expectations or is subject to a contract with an external organisation, must ensure that their Manager of Innovation and Commercial Development (MICD) has negotiated a Student Deed of Assignment and/or Confidentiality Agreement with the Student **before** the Student commences work on the project. If the Student chooses not to sign a Student Deed of Assignment and/or Confidentiality Agreement for that project, the project will not be available to that Student and the Student will then be free to choose another project without prejudice.

Student assignment of IP is dealt with separately in the Student Assignment of Intellectual Property Policy.

11. Notification of Intellectual Property

To enable UOW to comply with the National Principles of Intellectual Property Management for Publicly Funded Research and to also successfully Commercialise IP, Staff Members and Students should avoid premature disclosure of research results and should notify UOW of new IP development. Staff Members and Students should complete an IP Notification Form to advise UOW that IP with potential commercial value has been developed (Attachment 1). The IP Notification Form should be submitted to the relevant Faculty MICD as soon as IP with potential commercial value is developed.

Sometimes, it may be important to protect IP that will not have commercial value. In such cases, the Creator should notify the relevant Faculty MICD of the new IP before completing an IP Notification Form and their MICD will advise if it is necessary or not to complete an IP Notification Form.

12. Commercialisation of Intellectual Property

After receiving the IP Notification Form, UOW will determine whether it wishes to protect and/or commercially exploit the IP. While this takes place, Creators must take all reasonable steps to protect that IP by avoiding public disclosure, such as publication or presentation (including submission of journal or conference abstracts).

UOW will consider the Creator's interests in publishing Scholarly Works as well as the wider obligation of disseminating research findings, while also ensuring that IP with commercial value is protected.

The Creators will have the opportunity to participate in the IP protection and Commercialisation process. Participation may include:

- early disclosure of new technologies to UOW;
- not making any external disclosures and delaying publication or presentation until a patent is filed;
- assisting UOW commercialisation staff and patent attorneys to draft and lodge patents;
- undertaking further research and development to provide the information necessary to complete final patent filing;
- disclosing collaborative links with other IP holders and identifying potential restrictions to their research activities that may result from Commercialisation deals (e.g. arising from licenses to companies that are competitors to existing collaborators);

- advising on their overall research strategy and any impacts that Commercialisation may have on this;
- assisting UOW commercialisation staff to understand the technical aspects of the discovery;
- assisting UOW commercialisation staff to present the technology to potential investors or licensees;
- agreeing to undertake further research, if funded, to support the licensee's or spin-out company's activities; and
- disclosing any other issues that may be of concern or interest in regards to Commercialisation.

Within three months of receiving an IP Notification Form, UOW will advise the Creators whether: a) it has decided to Commercialise the IP; b) it has decided not to Commercialise the IP; or c) needs further time to evaluate the commercial prospects and undertake further due diligence (regular updates on progress regarding a decision will then be made via the relevant Faculty MICD). In situations where complex commercial or technical assessment and due diligence is required, UOW may take up to eighteen months to make a decision on whether or not to Commercialise .

UOW will consider any external issues, such as proposed publication deadlines and the progress of competing researchers, when determining how and when IP should be protected.

Where UOW decides not to proceed with the protection or Commercialisation of IP, or if a decision is made to cease commercialising at a later stage, UOW will allow the Creators the opportunity to seek funding and commercial partners, provided that the Creators have fully disclosed the IP and cooperated with UOW during UOW's evaluation of the IP. This will not, however, affect UOW's right to seek a share, which will be determined on a case-by-case basis by the Commercialisation Revenue Committee (described in UOW's Commercialisation Revenue Policy), of nett commercialisation revenue from any such Commercialisation by the Creators.

Where UOW decides not to proceed with a patent application, it will use its reasonable efforts to provide early notice of this decision to the Creators so that they may have the opportunity to continue patent protection at their own costs. Wherever possible, UOW will provide three months notice of its intention not to continue with a patent and during this period will continue to pay ongoing patent application costs in patent jurisdictions already entered. However, this is limited to ongoing payments and does not extend to initial national phase entry costs for each patent jurisdiction or initial filing costs for a complete specification.

Obligations for Staff Members to sign forms, execute agreements, assist in patent processes and keep information confidential will extend beyond their period of employment.

13. Sharing the Financial Benefits of Commercialisation

UOW wishes to encourage innovation by rewarding the Creators of IP with a share in the nett commercialisation revenue, as follows:

- 50% to UOW; and
- 50% to the Creators.

Specific revenue sharing provisions are detailed in UOW's Commercialisation Revenue Policy.

14. Dispute Resolution

If a dispute arises about how to interpret or apply this Policy, a grievance may be notified according to the procedures set out in UOW's Grievance Resolution Procedures.

Where a Staff Member or a Student is unable to reach agreement with UOW in regards to the Commercialisation (other than ownership and revenue sharing provisions which are dealt with in the Commercialisation Revenue Policy) or protection of IP, they may refer their grievance to the Deputy Vice-Chancellor (Research) or to an officer appointed by the Deputy Vice-Chancellor (Research) for that purpose. That officer will attempt to resolve the dispute by mediation within a

period of three months. Either party may request that an external mediator, acceptable to both parties, be involved in the dispute resolution at this stage. In the event of a continuing grievance, the matter will be determined by an independent expert or independent panel of experts nominated by the Deputy Vice-Chancellor (Research) and Chaired by the Deputy Vice-Chancellor (Research) or their representative.

All matters associated with the resolution of disputes for Staff Members and Students will be held confidential.

15. Communication

It is the responsibility of the Research and Innovation Division to develop and review the communication strategy for this policy.

16. Review and Change History of this Policy

Last Version Number	Date the Version was Reviewed	Authorised By (Committee or Individual)	Change Details
1	2006	Council	