



Intellectual Property: Ownership and Management Policy

POLICY NO: RES 22

DATE OF APPROVAL: 15 December 2016 Council Resolution 2016/7/14

From the effective date, this Policy and associated documents replaces all version or iterations of previous Intellectual Property Policy and/or Guideline documents.

AMENDMENTS:

REFERENCE AUTHORITY: Deputy Vice Chancellor and Vice President (Research & Innovation)

REFERENCES:

Intellectual Property Guidelines
Intellectual Property Principles
Conflict of Management Policy

1. Objectives

The University is committed to maintaining an innovative culture that continually fosters the creation and further development of Intellectual Property (IP). IP is created by students, academics and professional staff as well as by adjuncts and visitors. The University also uses IP owned by others, with permission, in University activities.

The University of South Australia (UniSA) is Australia's *University of Enterprise* and is committed to supporting the effective generation, management and transfer of IP into outcomes and innovation. As a key element to supporting the teaching and research undertaken at the University, UniSA has a particular focus on the appropriate utilisation of IP as a means of knowledge creation and dissemination. Importantly, UniSA considers it a priority for IP developed at the University to be utilised to deliver social and economic benefits to our communities. Where this relates to the commercialisation of IP, the University has implemented a framework of support mechanisms for students and staff to ensure that support for the commercialisation process is flexible, agile and responsive to the needs of the beneficiaries of the IP. This Policy and the associated Intellectual Property Guidelines are central elements to the framework of support mechanisms. Importantly, this Policy has been developed to promote and encourage entrepreneurship – providing proactive support mechanisms across the institution that are available to all Students and Staff.

It is the purpose of this Policy to promote the effective and ethical management of IP within the University. Encouraging best practice in all aspects of IP creation and management will lead to substantial benefits to the Creators of IP, our partners, the University and the broader community.

The University is committed to fostering productive relationships with end-users of research outcomes. In supporting this, and acknowledging the importance of IP in these relationships, a set of [IP Principles](#) has been developed that outline the University's approach for commercialising IP, partnering with industry and supporting student/staff entrepreneurship.

What is Intellectual Property (IP)?

IP means and includes all forms of IP rights whether arising under legislation or existing at law. IP includes all rights resulting from intellectual activity across all fields, including the right to apply for registration of such rights, and includes all rights in relation to circuit layouts, copyright, confidential information (including trade secrets and know how), designs, inventions and patents, plant varieties, plant breeders rights and trademarks.

Please note that [Copyright](#) is a unique form of IP and is dealt with under a separate University Policy.

UniSA's IP Principles

UniSA is committed to the effective management and transfer of IP developed by our research to our partners. We offer a pragmatic and flexible approach to working with our partners and to ensuring the outcomes of research have every opportunity to deliver economic, social and environmental benefits to our industry collaborators and entrepreneurs in Australia and internationally. We are committed to working in an agile and nimble way that respects the (often tight) timeframes and unique requirements of our partners and to meet these to the utmost of our ability.

Our approach to managing IP is based on the following principles, which have been adopted across all Australian Technology Network (ATN) Universities:

1. We actively encourage students and staff to undertake research that is relevant to challenges faced by society and in partnership with industry, government and community groups.
2. As guided by our industry partners, we encourage them to own and take the lead in commercialisation of intellectual property generated from industry-funded research when they are best placed to do so.
3. Where access to university owned or jointly owned IP is necessary or beneficial for commercialisation we support access to the IP based on fair and equitable terms, in a timely manner.
4. Our interactions with industry will be governed by a transparent, flexible and user-friendly system that supports and encourages engagement using a range of IP models.
5. Each university will make public our Intellectual Property Policies and Standard Commercial Agreement templates, to provide a simple and transparent framework.
6. We actively encourage and promote an entrepreneurial culture for our staff and students. This includes a system of support to facilitate the creation of new ventures where our staff and students are appropriately involved.
7. All partnerships and resultant commercial agreements will be developed and negotiated in a prompt manner and in keeping with these core principles.

The objectives of this Policy are to:

1. Clarify the circumstances in which the University owns IP created by students, staff and external participants;
2. Assign responsibilities for the management of University IP;
3. Outline the identification and reporting requirements for University IP;
4. Require that students and staff consider the proper use of IP owned by other parties;
5. Require that students and staff consider the protection of University IP prior to discussing or otherwise publishing the results of research;

6. Outline the role of [UniSA Ventures Pty Ltd](#) in the assessment, protection and commercialisation of University IP; and
7. Outline services provided by the University to support appropriate use of IP, commercialisation and entrepreneurship.

Definitions of terms used in this Policy are located in Appendix 1.

2. Roles and Responsibilities

All staff

Under common law and employment conditions at the University, ownership of all IP generated by staff in the course of or incidental to their employment, vests in the University as University IP. This includes all IP generated where any University facilities, resources or pre-existing IP are wholly or partly used, and where Staff or Students participate in projects funded by an external organisation and/or the Project is subject to a commercial agreement with an external organisation.

As a condition of their employment at the University, all academic and professional staff are obliged to comply with the requirements of University Policy including the specific obligations of this Policy.

Staff must act in a manner that respects the ownership of IP by others – including the University, external participants in research and the owners of indigenous knowledge. All staff are to:

- a) Identify, report and monitor the creation of new University IP in their areas;
- b) Identify and record any IP in their areas which is the property of an organisation/person other than UniSA or to which another organisation/person has rights; and
- c) To work with UniSA Ventures Pty Ltd on matters relating to commercialisation of University IP.

UniSA Ventures Pty Ltd

UniSA Ventures is a wholly owned subsidiary of the University and is responsible for the assessment, protection, management and Commercialisation of University IP. UniSA Ventures constantly reviews University IP with a view to identifying any parts that are suitable for Commercialisation. This is generally triggered when University Staff and/or Students flag potential University IP to UniSA Ventures via an [Invention Disclosure Form](#) on the [UniSA Ventures website](#) or directly contacting UniSA Ventures staff.

UniSA Ventures will undertake an assessment of University IP for commercialisation potential. UniSA Ventures will conduct the assessment within 3 months, unless agreed otherwise. Before the outcome of the assessment is communicated, the determination will be reviewed and endorsed by the Chief Executive Officer: UniSA Ventures. Once the assessment is endorsed by the Chief Executive Officer: UniSA Ventures the outcome will be communicated to the researcher, the researcher's Head of School (or Institute Director) and Pro Vice Chancellor, and the Deputy Vice Chancellor: Research and Innovation. On the basis that UniSA Ventures confirm their commitment to support commercialisation of University IP (Commercialisable IP), they will work closely with inventors and research leaders to determine the most appropriate pathway forward for commercialisation and the required resources. In the event that UniSA Ventures decides to not support commercialisation of University IP, the default position will be that the rights and ownership of the relevant University IP can be transferred creators of that IP personally.

UniSA Ventures is authorised to assign, licence, and otherwise deal with University IP for the purposes of commercialisation at its sole discretion and in accordance with the University's IP Principles as well as to provide education relating to IP. UniSA Ventures receives the proceeds of Commercialisation and distributes them according to the principles outlined herein.

3. Creation, Identification, Recording and Reporting of Intellectual Property

Creators of University IP should to the extent possible, protect their interests and those of the University through detailed note taking and data storage, prior invention and article searches, in addition to maintaining confidentiality of information where appropriate.

4. Ownership of Intellectual property

4.1 Ownership of Intellectual Property created by staff

Subject to Section 4.2, the University owns all University IP (including all IP and associated rights in IP created by staff in the course of or incidental to their employment).

Teaching Materials

Teaching Materials form part of the University's IP collection and remain an integral part of the University's mission in educating professionals. Therefore the University owns all Teaching Materials created by staff members. Heads of School (or equivalent) are responsible for ensuring that Teaching Materials created within the School/Unit are retained and maintained for use by the University.

Teaching materials must not contain University confidential information, descriptions of University IP that has not yet been assessed by UniSA Ventures for commercialisation potential or University IP currently in the process of being commercialised, unless otherwise approved by UniSA Ventures.

Funded research

The ownership and the associated rights of all University IP generated from a research project funded by any publicly funded research agency or an industry partner will typically vest in the University. In some instances, and on a case-by-case basis, the University may enter into Agreements with third parties and/or with the research funder that details specific arrangements for managing and commercialising University IP produced from the research.

4.2 Scholarly Works

Scholarly works are a natural consequence of academic scholarship. Examples of scholarly works include journal articles, books, music, presentations, papers, paintings, artistic designs and other creative works. Scholarly works are created by staff, students, adjuncts and visitors to the University.

Subject to the other provisions of this Policy, ownership of the copyright in scholarly works remains with the author or authors who created the Scholarly Work. The author of a scholarly work created whilst the author was employed by the University, enrolled as a student, an adjunct or a visitor to the University, is deemed to have granted the University, unless otherwise agreed in writing with the University, a non-exclusive, perpetual, irrevocable, royalty-free, fee-free, worldwide licence to use the Scholarly Work for educational, teaching and research purposes, whether or not the relevant employee, student, adjunct or visitor is still employed, enrolled or engaged by the University.

Any University IP that may be described in a Scholarly Work is owned by and remains the property of the University.

4.3 Sharing commercial benefits

Staff members who create IP over which the University asserts ownership under Clause 4 are eligible to receive a share of any commercial benefits that the University receives from developing it in accordance with the [UniSA Ventures Intellectual Property Commercialisation Guidelines](#).

The sharing of commercial benefits with staff members does not apply to any use of Teaching Materials as an aid or tool for instruction in a course.

4.4 Ownership of IP created by Students

Student IP

The University makes no claim to the IP created by a Student unless the IP was created as part of the Student's involvement in a Sponsored Project.

Projects involving External parties

Where the Student creates or is involved in the creation of IP as part of a Sponsored Project, the University may be required to obtain an assignment of the IP from the Student (see definition). Accordingly:

- a) To facilitate the Student's involvement in such projects and to enable the effective translation of research outcomes and IP to the University's partners, Students may be required to enter a Student Participation Agreement with the University prior to the commencement of research in order to effect a legal assignment of this IP to the University.
- b) The Student's Supervisor is responsible for ensuring that a statement of agreement is completed by the student including the Student Participation Agreement as a precondition to involvement in that project.
- c) Where the Student has legally assigned IP to the University, the Student will receive a return from its commercialisation by the UniSA Ventures upon the same basis as a staff member (Clause 4.3).

Return of IP to students

The University is committed to supporting Students as entrepreneurs. As a starting point, Students at UniSA will own their IP. Under this circumstance, the supports and networks of the University will be made available to the Student to support commercialisation of this IP where possible and appropriate. In some circumstances Students are required to assign the ownership of their IP to the University. This is typically where projects funded by external agencies or industry partners require such assignment for Students to be able to participate in the project. Under this circumstance, and where the funding agency or industry partner does not choose to pursue the IP, the Student may apply to the University in writing requesting the re-assignment or licence of relevant IP to enable this and the supports and networks of the University will be made available to the Student to support the commercialisation of this IP where possible and appropriate.

Student Theses and Assessment Materials

In general, the University claims no ownership of copyright in a Student's coursework, such as assignments and student theses. Where coursework relates to a project involving a 3rd party or involves use of pre-existing University IP, the University is entitled to an exclusive, perpetual, irrevocable, royalty-free, fee-free, worldwide licence to use the results of and copyright in such coursework for the University's purposes, including commercialisation and the filing of patent applications. Where a student's coursework or thesis contains or describes IP (including copyright in any project data) that has been legally assigned by the Student to the University, that IP (including copyright in any project data) remains University property, notwithstanding that the student owns the remaining copyright in such coursework or thesis.

Nothing in this Policy will restrict the rights of a Student to assessment. It is generally understood that theses are dealt with in a confidential manner by examiners in all cases. That is, it is not permissible for an examiner to make any use of the material in a thesis without due acknowledgement; to make copies or to show the thesis to others; or to make use of IP contained or described in it. There are cases, however, in which a greater level of legal protection is required either by the candidate or by a third party such as a funding agency or commercial partner because the thesis contains material that may be commercial-in-confidence, may give rise to a patent, or may be legally or culturally sensitive. A request for a confidential examination is indicated when completing the Nomination of Thesis Examiners form.

Where the student thesis contains or describes University IP or other confidential information (including confidential project data) the University may require the publication of such work to be limited, restricted or delayed as appropriate.

Students developing IP that may be considered commercialisable are required to work with their Supervisors and UniSA Ventures to assess the commercial potential for the IP.

4.5 External Participants and Adjuncts

As a condition of involvement in a University project, an External Participant including visitors to the University may be required to sign a confidentiality agreement and/or an IP assignment. Such agreement should be considered where confidential information may be obtained or University IP with commercialisation potential may be developed by the External Participant as a direct consequence of being involved in the project. The University staff member authorising the involvement of the External Participant is responsible for ensuring that the relevant agreements are obtained from Research and Innovation Services (RIS) then completed and recorded in the project file.

All Adjuncts are required to be a party to the University's Adjunct Relationship Deed. In the context of Commercialisation, Adjuncts have the same rights and obligations as University staff members as it relates to their activities and duties as an Adjunct of the University.

4.6 Traditional Knowledge

The University respects traditional knowledge of Indigenous Australians and all Staff and Students must ensure that Indigenous Australian IP rights are managed in a way which is respectful to Indigenous Australians and culture. Where traditional knowledge of Indigenous Australians is used in University activities the owners of that knowledge are to be identified and consulted prior to the use of that traditional knowledge in any University activity. Informed prior consent must be obtained from the owners prior to University use of traditional knowledge. University research activities will be undertaken in accordance with these principles, and the *Guidelines for Ethical Research in Australian Indigenous Studies (Australian Institute of Aboriginal and Torres Strait Islander Studies, www.aiatsis.gov.au)*.

5. Moral Rights

Moral Rights (*see definition in Appendix 1*) are defined under the *Copyright Act 1968*, and include the right to be identified as the creator of a work, the right to object to false attribution of authorship and the right to object to any derogatory treatment of the work. The University will use its best endeavours to ensure that Moral Rights of Creators arising from University research activity are upheld.

6. Application of Policy

This Policy applies to all Students and Staff, Adjuncts and Visitors.

Breaches of this Policy by Students may be considered as academic misconduct and the University may deal with the matter in accordance with relevant student processes and procedures.

Breaches of this Policy by Staff may be considered as misconduct and the University may initiate disciplinary proceedings in accordance with the applicable industrial instrument.

Breaches of this Policy by Adjuncts and Visitors will be dealt in accordance with their contractual arrangements with the University (Section 4.5).

The [UniSA Ventures Intellectual Property Guidelines](#) provide more detailed information for the purposes of the administration and commercialisation of IP under this Policy. The Deputy Vice Chancellor: Research and Innovation may approve changes to the UniSA Ventures Intellectual Property Guidelines from time to time. In the event of any inconsistency, the terms of this Policy shall prevail.

Appendix 1: Definitions

Commercialisable Intellectual Property (IP) comprises IP and IP rights with the potential to deliver commercial or other agreed benefits. UniSA Ventures is delegated to assess suitability for commercialisation. University IP that is to be the subject of a third party commercial licence or assignment is considered to be Commercialisable IP.

Commercialise/Commercialisation is any means of transfer or exploitation of IP (including to make, sell, assign, apply, give away, adapt, copy, publish, manufacture, licence, sub-licence, franchise, exploit, market, distribute or otherwise use or dispose of Intellectual Property) for the purpose of commercial gain. The use and exploitation of Teaching Materials by the University whether in its programs, alliances or other educational activities does not constitute commercialisation under this Policy notwithstanding that the University may receive returns from such use.

Teaching Materials means any IP created for use in or in relation to a University program, course or short course, whether leading to the award of a degree or not, including for use by an affiliate or partner of the University. Teaching Materials include lecture notes, course notes, slides, presentations, handbooks, spreadsheets, course outlines, course reading lists, computer programs used for teaching purposes, maps, photographs, broadcasts, tutorials, questions, exams, online materials, films and all other materials created, developed, used or supplied for the purpose of learning and teaching at UniSA.

Creator(s) means any student or staff member who create IP, whether singularly, or in conjunction with others.

External Participant means any person other than a Student or staff member who takes part in any research or scholarly output that is being conducted through the University, or who visits any part of the University in which research or scholarship is conducted.

Intellectual Property (IP) means and includes all forms of IP rights whether arising under legislation or existing at law. IP includes all rights resulting from intellectual activity across all fields, including the right to apply for registration of such rights, and includes all rights in relation to circuit layouts, copyright, confidential information (including trade secrets and know how), designs, inventions and patents, plant varieties, plant breeders rights and trademarks.

Moral Rights include the right to be identified as the creator of a work, the right not to have authorship falsely attributed and the right to integrity of authorship of a work (the author's right to object to derogatory treatment of his or her work which prejudicially affects his or her honour or reputation).

Net Revenue means the financial return received by UniSA Ventures from the commercialisation of Commercialisable IP less all costs incurred by UniSA Ventures for the protection, commercialisation, further development of and investment in the IP in accordance with the policies and conditions of funding from UniSA Ventures and including payment of any applicable government taxes.

Publication means the disclosure of information on a non-confidential basis to any person or entity by any means (print, digital, audio, video, oral etc.) and in any format.

Sponsored Project means a project involving a student where:

1. The Project is funded by an external organisation and/or the Project is subject to a commercial agreement with an external organisation; or
2. The Project uses pre-existing University IP, i.e. IP developed within the University or for the University before the Project commenced or independently of the Project.

Staff or staff member means any employee of the University at the time of creation of IP. This includes former staff members employed at the time of creation of the IP but will generally exclude adjunct appointments, Students and visitors.

Student means an undergraduate or postgraduate student of the University at the time of creation of IP. Where a Student creates IP in the capacity of a University employee, the Student will be considered a staff member in relation to that creation.

Student Participation Agreement means the written agreement between the University and a Student which gives effect to the assignment of Student IP to the University, where appropriate in accordance with this Policy.

Supervisor means a Pro Vice Chancellor, Head of School, Director of Institute, Centre or Unit, Director: Centre for Regional Engagement, Manager of Area or other appropriate person to whom a staff member immediately reports and in the case of a student means the staff member who supervises the student's studies. A Supervisor must also be suitably authorised pursuant to the Vice Chancellor's Authorisations in each instance.

University IP means all IP (excluding moral rights):

1. a) Generated by staff in the course of or incidental to their employment;
2. b) That under common law would be deemed to be owned by the University as an employer;
3. c) Arising from the use by Staff of University premises, facilities, resources or pre-existing University IP;
or
4. d) Generated by Students or Staff as part of a Project funded by an external organisation and/or the Project is subject to a commercial agreement with an external organization.

Visitor means a person or organisation who visits or is given access to University premises, facilities or resources or any part of the University in which University activities are conducted, for the purpose of taking part in teaching, research or other scholarly or creative activity, and who is not a Staff member nor a Student nor an Adjunct.