

# Intellectual Property Policy (MPF1320)

## 1. Objective

The objective of this policy is to set out principles concerning the management and administration of [Intellectual Property](#) for the University.

## 2. Scope

This policy applies to all staff, students (including graduate researchers), honorary appointees and visitors (collectively referred to as [Creators](#) where they generate Intellectual Property in that capacity) at the University.

## 3. Authority

3.1. This policy is made under the [University of Melbourne Act 2009 \(Vic\)](#), the [University of Melbourne Statute](#) and the [Vice-Chancellor Regulation](#).

3.2. This policy supports compliance with the:

(a) *Australian Code for the Responsible Conduct of Research 2018*;

(b) *Circuit Layouts Act 1989* (Cth);

(c) *Circuit Layouts Regulations 1990* (Cth);

(d) *Copyright Act 1968* (Cth);

(e) *Copyright Regulations 2017* (Cth);

(f) *Designs Act 2003* (Cth);

(g) *Designs Regulations 2004* (Cth);

(h) *Patents Act 1990* (Cth);

(i) *Patents Regulations 1991* (Cth);

(j) *Plant Breeder's Rights Act 1994* (Cth);

(k) *Plant Breeder's Rights Regulations 1994* (Cth);

(l) *Trade Marks Act 1995* (Cth);

(m) *Trade Marks Regulations 1995* (Cth);

(n) *Aboriginal Heritage Act* (Vic) 2016; and

(o) *The Declaration on the Rights of Indigenous Peoples*.

3.3. This policy aligns and supports compliance with the [Aboriginal and Torres Strait Islander Cultural Heritage Policy](#) and [Branding Policy](#).

## 4. Policy

4.1. The University is committed to maximising the beneficial expression, adoption, and commercialisation of Intellectual Property while being guided by its primary mission of public-spirited research, teaching and engagement.

4.2. The University fosters a culture which supports the creation of new knowledge. Through research, teaching, scholarship and invention, the University's staff, students (especially graduate researchers), honorary appointees and visitors add to the stock of human knowledge, and generate Intellectual Property. All University staff have a duty to invent in the course of their teaching, research, scholarship and translation endeavours at the University, to support the University in its commitment to benefit society through the transformative impact of education and research.

4.3. The University recognises and respects Indigenous Cultural and Intellectual Property.

4.4. The University recognises and respects the moral rights of Creators of copyright works and performers in accordance with the *Copyright Act 1968* (Cth).

4.5. Nothing in this policy prevents staff, students, honorary appointees or visitors from seeking independent legal advice with respect to intellectual property matters.

### Ownership

4.6. The University owns Intellectual Property created by staff in the course of, or incidental to, employment with the University, except copyright in [Scholarly Works](#). This is stipulated in [section 13\(1\) of the Statute](#).

4.7. The University owns Intellectual Property created by any student, honorary appointee or visitor:

(a) whilst engaged in an activity which is the subject of a [Specified Agreement](#); or

(b) if that Intellectual Property constitutes [Teaching Material](#).

This is stipulated in [section 13\(2\) of the Statute](#).

4.8. The University does not own the copyright in Scholarly Works, unless the ownership or use of the Scholarly Works is prescribed under a Specified Agreement. This is pursuant to [sections 13\(2\), 13\(3\) and 13\(4\) of the Statute](#).

4.9. The University is deemed to have been granted by the Creator(s) of Scholarly Works a non-exclusive, royalty-free, worldwide and irrevocable license to use the copyright in the Scholarly Works for research and teaching purposes. This is stipulated in [section 13\(5\) of the Statute](#).

4.10. Prior to generating Intellectual Property with a third party, Creators must ensure there is a clear written agreement with that third party(ies) concerning the ownership and use rights of the new Intellectual Property that will / may be created.

4.11. Where a Creator is both a member of staff and also a student and that Creator generates Intellectual Property:

- (a) in their capacity as a staff member, clause 4.6 applies; and
- (b) in their capacity as a student, clause 4.7 applies.

## Disclosure

4.12. Staff, students, honorary appointees and visitors have a duty to fully disclose Intellectual Property they create to the University where:

- (a) the University has a contractual obligation to disclose the Intellectual Property to a third party under a Specified Agreement or any other third party agreement;
- (b) ownership or use of such Intellectual Property is prescribed in a Specified Agreement; or
- (c) the Intellectual Property is an invention, discovery or technology that may have the potential for commercial application.

This is stipulated in [section 13\(6\) of the Statute](#).

4.13. The disclosure of Intellectual Property must:

- (a) include all information necessary to fully describe the nature and operation of the Intellectual Property;
- (b) occur every time there is a new development or finding concerning the Intellectual Property, even if the Creator has previously made an initial disclosure to the University; and
- (c) occur at the [earliest appropriate stage](#), and in all cases before discoveries are shared with any external party.

4.14. Staff, students, honorary appointees and visitors must maintain [adequate records](#) concerning the Intellectual Property they create to enable the University to assess, protect, use and commercialise the Intellectual Property.

## Assessment

4.15. The University will advise Creator(s) whether the University intends to proceed with registered protection and/or commercialisation of the Intellectual Property disclosed under clause 4.12 within a reasonable time-period.

4.16. Where the University elects to proceed with registered protection and/or commercialisation of Intellectual Property, the University will ordinarily:

- (a) require Creator(s) to assign (or confirm assignment of) the Intellectual Property to the University in writing as a condition of the University proceeding with the protection and commercialisation of the Intellectual Property; and
- (b) lead, and bear the costs of the protection and/or commercialisation of the Intellectual Property, or arrange for a third party to do so.

4.17. Nothing in clause 4.16 compels an owner of Intellectual Property to assign ownership of Intellectual Property to the University where the University otherwise has no claim to ownership of such Intellectual

Property by operation of law (including under the Statute). However, the University will not ordinarily proceed with or fund the protection or commercialisation of Intellectual Property where it does not hold relevant ownership rights.

4.18. The University may revise a previous decision to proceed with the protection and/or commercialisation of Intellectual Property. In all cases, the University will advise Creator(s) of decisions regarding the protection and/or commercialisation of Intellectual Property.

4.19. Where the University decides not to proceed with protection and/or commercialisation of Intellectual Property, Creator(s) may apply:

(a) to lead the protection and/or commercialisation of the Intellectual Property at the Creator(s)' own cost and expense; and/or

(b) for the Intellectual Property to be licensed or assigned to the Creator(s) or a designated third party.

Such licence or assignment, if granted by the University, may be conditional on such terms as it sees fit, including without limitation, recuperation of its costs, a share of the proceeds from commercialisation, and rights to a perpetual royalty-free licence for research and teaching purposes.

4.20. The University has sole discretion when considering whether to grant an application under clause 4.19.

## Use

4.21. The University may, within its rights, assess, protect, commercialise, acquire, assign, license, defend or enforce its rights concerning Intellectual Property.

4.22. Staff, students, honorary Appointees and visitors have a duty to comply with all reasonable requests by the University concerning the development, disclosure, assessment, protection, commercialisation, publication, use, enforcement and defence of any Intellectual Property in which the University has an interest.

4.23. The University may require Creators to confirm the assignment of relevant Intellectual Property interests to the University under the Statute in writing. This is stipulated in [section 13\(7\) of the Statute](#).

4.24. Staff, students, honorary appointees and visitors must:

(a) comply with the University's confidentiality obligations concerning Intellectual Property, as notified under clause 4.27 and 4.28;

(b) comply with the University's publication obligations, when publishing content related to the Intellectual Property, as notified under clause 4.27 and 4.28;

(c) if engaged in an activity that is the subject of a Specified Agreement, not cause the University to be in breach of the terms of that agreement;

(d) respect the Intellectual Property rights of the University and third parties; and

(e) not enter into agreements that restrict the University's ability to utilise its Intellectual Property, without written authorisation from the University.

4.25. As part of the conduct of their research and teaching activity, students, honorary appointees or visitors may require access to unprotected Intellectual Property held by the University. In such cases, the University may require students, honorary appointees and visitors to:

- (a) sign a confidentiality agreement in relation to the unprotected Intellectual Property; and/or
  - (b) assign ownership of improvements based on the unprotected Intellectual Property to the University;
- as a precondition for accessing the University's unprotected Intellectual Property.

4.26. The Vice-Chancellor may sign, execute, or action any document on behalf of a Creator, if the Creator has not signed, executed or actioned a document as required concerning Intellectual Property in which the University has an interest. This is stipulated in [section 13\(8\) of the Statute](#).

4.27. Supervisors must ensure all staff, students, visitors and honorary appointees involved in the use or development of Intellectual Property are informed of the confidentiality requirements, protections, publication obligations, specified agreements, third party rights and restrictions on use or communication that apply to that Intellectual Property.

4.28. Staff, students, visitors and honorary appointees involved in the development of Intellectual Property must enquire with their Supervisors about the confidentiality requirements, protections, publication obligations, third party rights and restrictions that attached to that Intellectual Property.

4.29. Staff, students, visitors and honorary appointees involved in activity which is sponsored by or undertaken at or on behalf of an affiliated or third-party institution may be impacted by the intellectual property policies of the affiliate or third-party institution. In these circumstances, staff, students, visitors and honorary appointees must familiarise themselves with the intellectual property policies of the affiliate or third-party institution. Such circumstances include but are not limited to:

- (a) joint research and research training programs at affiliate institutions such as Medical Research Institutes;
- (b) sabbatical at a host institution;
- (c) joint appointments; and
- (d) External Work arrangements.

Staff, students, visitors and honorary appointees should discuss the implications and any questions they may have with regard to their obligations under affiliate or third-party institution policies with the affiliate or host institution, their Supervisor, and/or a member of the University's Knowledge and Technology Transfer Team.

4.30. Before undertaking any commercial development resulting from use of aspects of Indigenous Cultural and Intellectual Property the Executive Director, Research, Innovation and Commercialisation (or delegate), in consultation with the Associate Provost (or delegate) must:

- (a) negotiate benefit sharing arrangements with the provider(s) of such material which the provider(s) consider to be appropriate and valuable; and
- (b) ensure that such arrangements are documented and recorded.

## Apportionment of the Net Proceeds of commercialisation

4.31. Where the University receives [Commercialisation Revenue](#) in respect of its Intellectual Property, Creators of such Intellectual Property are entitled to share in the Net Proceeds (if any) in the proportion specified at clause 4.32 provided that they have assigned, or confirmed assignment of, their rights to such Intellectual Property to the University.

4.32. The University will apportion the Net Proceeds according to the following distribution:

Party		Share of Net Proceeds
Creator(s)		40%
University of Melbourne	Creators' <a href="#">academic division</a>	40%
	Central University division	20%

4.33. Unless otherwise agreed between the co-creators, each Creator eligible to receive an apportionment of the Net Proceeds under clause 4.32 will receive an equal portion of the Creator(s) share of Net Proceeds.

4.34. Persons who are not Creators but who nevertheless make contributions to the creation or exploitation of Intellectual Property, such as through the reduction of an invention to practice are termed Contributors and are not entitled to a share in the net proceeds of commercialisation for Intellectual Property. Should all co-creators agree, a portion of the Creators' share of Net Proceeds of commercialisation may be directed to one or more contributors. This is at the discretion of Creators and is not an entitlement to share in the proceeds of commercialisation.

## Dispute Resolution

4.35 The Executive Director, Research, Innovation and Commercialisation has responsibility for mediating any internal dispute concerning the operation of this Policy.

4.36 Where a dispute cannot be resolved as per clause 4.35, the matter will be referred to the Deputy Pro Vice-Chancellor (Research Collaboration and Partnerships) for arbitration.

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## 5. Procedural principles

5.1. The Executive Director, Research, Innovation and Commercialisation is responsible for setting and implementing processes for managing and administering Intellectual Property in support of this Policy, including:

- (a) its ownership, protection, enforcement, defence, licensing, assignment and use, including the Vice-Chancellor's power of attorney;
- (b) its disclosure, development, security and commercial exploitation;
- (c) the apportionment of proceeds of commercialisation; and
- (d) the obligations and rights of Creators and other relevant persons or bodies.

5.2. Notwithstanding clause 5.1, the Executive Director, Research, Innovation and Commercialisation is not responsible for the management and administration of Intellectual Property in regards to branding, brand marks and logos. Branding, brand marks and logos must be dealt with in accordance with the University's [Branding Policy](#).

5.3. The Pro-Vice-Chancellor (Research Collaboration and Partnerships) is responsible for approving guidelines that support this policy, as well as any amendments to those guidelines.

## 6. Roles and responsibilities

<i>Role/Decision/Action</i>	<i>Res</i>
Maintain adequate records concerning the creation, ownership and use rights of Intellectual Property.	Cre
Disclose the creation of Intellectual Property to the University.	app
Comply with all reasonable requests made by the University concerning Intellectual Property.	
Comply with the terms of specified agreements.	
Comply with the Intellectual Property rights of the University or any third party.	
Refrain from entering into agreements that restrict the University's ability to use its Intellectual Property, without appropriate University authorisation.	
Sign, execute or action a document on behalf of a creator.	Vic
Approves this policy and any amendments on behalf of the University.	Dep
Provide adjudication on a dispute, in accordance with this policy.	Pro
Approve guidelines that support this policy.	Coll
Approve and implement processes and training that support this policy.	Exe and
Has responsibility for: <ul style="list-style-type: none"> <li>the overall management of Aboriginal and Torres Strait Islander cultural heritage;</li> <li>ensuring compliance with legislative instruments specified in the <a href="#">Aboriginal and Torres Strait Islander Cultural Heritage Policy</a> and with other legislative instruments that may apply; and</li> <li>approving the initiation or undertaking of any controlled activity.</li> </ul>	Ass
Has responsibility for providing advice and assistance on management and protection of the University's Intellectual Property in relation to brand, brand marks and logos.	Exe Com

## 7. Definitions

**Adequate Records** means detailed records on Intellectual Property to enable the University to identify, assess, protect and commercialise the Intellectual Property. This includes, but is not limited to:

- (a) identifying who has created Intellectual Property;
- (b) identifying the date of the creation of Intellectual Property;
- (c) fully describing the nature and operation of the Intellectual Property;

- (d) fully identifying all parties who may have an interest in the Intellectual Property;
- (e) fully identifying any known rights or other interests in the Intellectual Property;
- (f) fully identifying who has gained access to the Intellectual Property; and
- (g) ensuring information can be provided to the University in a retrievable format.

**Commercialisation Revenue** means cash proceeds received by the University as the direct result of the sale, transfer, assignment or licensing of its Intellectual Property, whether as royalties, lump sums or arising from the disposal of shares that were acquired in exchange for Intellectual Property rights. It does not include:

- (a) research and development or consulting funds derived by the University;
- (b) returns from a direct investment by the University or a controlled entity which is not in consideration for the transfer of the right to or ownership of the relevant Intellectual Property to the commercialising company; or
- (c) any income derived from the delivery of the University's courses or other educational curriculum or content delivered independently by or collaboratively with any third party in Australia or internationally.

**Creators** means any member of staff, students, honorary appointees or visitors who create any intellectual property whether or not in conjunction with other persons. The term Creators includes those entitled to be named as inventors for the purpose of patent applications and authors for the purpose of copyright law.

**Creator's Academic Division** means the Creator's Faculty at the time of the creation of the intellectual property. Creator's Academic Division does not refer to the academic unit below the level of Faculty. Where there is more than one Creator, Academic Divisions receive their share of the Net Proceeds of Commercialisation on a pro-rata basis in line with the distribution to Creators.

**Contributors:** Persons who are not Creators, or may not be entitled to be named as Creators in any application for Intellectual Property protection, but who nevertheless contributed to the creation or exploitation of Intellectual Property, such as through the reduction of an invention to practice.

**Earliest Appropriate Stage** means that disclosure of Intellectual Property is done as soon as possible to allow, and not undermine, the University's ability to assess the prospects of protecting and commercialising the Intellectual Property.

**External Work** means work undertaken not for the University or as part of the normal duties of the employee's role and includes employment or any other form of paid work external to the University, including proprietorship, directorships, independent contracting, or consultancy. External work does not include work contracted through the University or undertaken in an employee's capacity as an employee of the University. Work contracted through the University can include teaching, consulting, research, development activities, MSPACE activities or other services provided by the University to other organisations or individuals.

**Honorary Appointee** means any person, other than a member of the academic staff, who holds an honorary or other academic appointment at the University irrespective of the date of commencement of that appointment, and who has access to University facilities for teaching, research or any other scholarly activity.



**Indigenous Cultural and Intellectual Property** means the rights of indigenous peoples, including but not limited to Aboriginal and Torres Strait Islander Peoples, to their heritage. This heritage includes tangible cultural property (e.g. sacred sites, burial grounds), intangible cultural property (e.g. languages, stories passed on orally), and documentation of indigenous peoples' heritage in all forms of media (e.g. reports, films, sound recordings).

**Intellectual Property** means an intangible creation of the human intellect. It primarily encompasses copyright, patents, confidential information and Trade Marks. It includes, but is not limited to:

- (a) literary, artistic, musical and dramatic works in which copyright subsists;
- (b) field and laboratory notebooks;
- (c) cinematographic and multimedia works in which copyright subsists;
- (d) performances of performing artists, sound recordings and broadcasts;
- (e) patentable and non-patentable inventions;
- (f) registered and unregistered designs, plant varieties and topographies;
- (g) circuit layouts;
- (h) registered and unregistered Trade Marks, service marks and commercial names and designations;
- (i) databases, computer software and related material not otherwise coming within any of the other items defined above as "Intellectual Property";
- (j) scientific discoveries; and
- (k) know-how and other proprietary information associated with any of the other items defined above as "Intellectual Property".

Intellectual Property also includes all research data and datasets.

**Moral rights** are a sub-category of rights under section 189 of the *Copyright Act 1968* (Cth) which protect the Creators of original copyright works including literary, dramatic, musical or artistic works and cinematograph films. Moral Rights include:

- the right of attribution of authorship
- the right not to have authorship falsely attributed; and
- the right of integrity of authorship – which is the right not to have their work treated in a derogatory way

**Net Proceeds** represents the difference between Commercialisation Revenue received and all costs and expenses incurred by, or on behalf of, the University in deriving such Commercialisation Revenue, including the cost and expenses of developing, protecting and commercialising the relevant Intellectual Property. The University recognises that the Creator's share of Net Proceeds of Commercialisation are proprietary rights held by the creator and that in the event of the Creator's death will vest in their estate.

**Scholarly Works** means any article, book, musical composition, thesis, creative writing or like publication or any digital or electronic version of these works that contains material based on the creator's scholarship, learning or research. It does not include work that is Teaching Material or any other work required to be disclosed under [section 13\(6\)\(b\) of the University of Melbourne Statute](#).

**Specified Agreement** means an agreement or deed between the University and any party which relates to the ownership or use of Intellectual Property that may arise out of an activity, including research, which is identified in the agreement or deed.

**Staff** means any person employed by the University.

**Statute** means the [University of Melbourne Statute](#).

**Student** means any person enrolled in accordance with the relevant policies and procedures at the University (including any person enrolled in research higher degrees, collectively referred to as graduate researchers).

**Teaching Materials** means all versions, digital or otherwise, of information, documents and materials created or used for the purpose of teaching and education by the University, including the permitted adaptation or incorporation of the scholarship, learning or research of the relevant member of academic Staff, Honorary Appointee, Visiting Personnel or Student for that purpose. Teaching Materials exclude Scholarly Works. Teaching Materials include, but are not limited to:

- (a) lecture notes that are made available to students;
- (b) computer-generated presentations;
- (c) course guides;
- (d) overhead projector notes;
- (e) examination scripts
- (f) examination marking guides;
- (g) course databases;
- (h) websites; and
- (i) multimedia-based courseware.

**University** means the University of Melbourne.

**Visitor** means a person appointed as a member of the University community (other than a member of staff, a student or an honorary appointee) who contributes to the teaching and research or general enhancement of the University through voluntary activities, although this person is not required to perform any specific work for the University.

## **POLICY APPROVER**

Deputy Vice-Chancellor (Research)

## POLICY STEWARD

Pro Vice-Chancellor (Research Collaboration and Partnerships)

## REVIEW

This policy is due to be reviewed by 12 October 2023.

## VERSION HISTORY

Version	Approved By	Approval Date	Effective Date	Sections Modified
1	Vice-Chancellor	21 July 2016	21 July 2016	New policy arising from the Regulatory Framework Review and Policy Consolidation Project.
2	Executive Director, Research, Innovation and Commercialisation	2 December 2016	2 December 2016	Editorial change to section 2.2 to reflect newly published Appropriate Workplace Behaviour Policy (MPF1328).
3				No change made - Version 2 archived in error.
4	Executive Director, Research, Innovation and Commercialisation	19 June 2017	19 June 2017	Editorial change, amending reference to process.
5	Executive Director Research, Innovation and Commercialisation	19 June 2017	22 November 2018	Amended link for the University of Melbourne Statute and the Vice-Chancellor Regulation at 3.
6	Vice-Chancellor	7 March 2019	19 August 2019	Changed Policy Approver to Deputy Vice-Chancellor (Research) (previously Vice-Chancellor).
7	Deputy Vice-Chancellor (Research)	25 September 2020	12 October 2020	Amendments to all clauses following a major review of the policy.
8	Deputy Vice-Chancellor (Research)	25 September 2020	12 October 2020	Version 8 created to rectify Policy Library attribute error - no amendment to policy content.