

## **1. INTRODUCTION AND OBJECTIVES**

- 1.1 This policy seeks to establish a framework for managing the intellectual property created by staff and students within the University.
- 1.2. The objectives of this policy are to:
- a. Preserve and enhance a climate of creativity, innovation and inventiveness among staff and students;
  - b. State clearly the respective ownership rights of the University and its members in relation to intellectual property;
  - c. Foster an awareness of the importance of intellectual property among staff and students;
  - d. Assist in establishing appropriate mechanisms for the more effective commercial exploitation of intellectual property for the benefit of the University and its members.
- 1.3. In giving effect to this policy the University acknowledges the need to be guided by the aims laid down in its mission statement and its obligations under the Education Act 1989. Particular regard shall be had to:
- a. The University's role as a critic and conscience of society;
  - b. The maintenance of international standards of research and teaching;
  - c. The freedom of academic staff and students within the law to:
    - (i) question and test received wisdom;
    - (ii) put forward new ideas; and
    - (iii) state controversial or unpopular opinions.
  - d. The freedom of academic staff to engage in research.
  - e. The University's obligations in respect of the Treaty of Waitangi.

- 1.4. Except as it may affect the rights and obligations of staff and students this policy is not intended to govern dealings between the University and third parties concerning intellectual property.
- 1.5. The University reserves the right to enter into express agreements with individual staff or students relating to intellectual property. Such agreements may be at variance with this Policy.
- 1.6. This Policy is to be administered and interpreted in accordance with the objectives and obligations set out in §1.2 and §1.3.

## **2.0 DEFINITIONS**

For the purposes of this policy:

- 2.1. "Academic institution" means any public or private sector organisation whether inside or outside New Zealand engaged in the provision or delivery of tertiary education and includes tertiary institutions established under the Education Act 1989.
- 2.2. "Academic staff member" means a staff member appointed by the University to undertake teaching or research.
- 2.3. "Artistic work" means an artistic work as defined by the Copyright Act 1994.
- 2.4. "Building" means a building as defined by the Copyright Act 1994.
- 2.5. "Book" includes sections in books.
- 2.6. "Collective copyright licence" means a licensing scheme covering the work of more than one author but does not include those schemes referred to in section 147(1)(a) and (b) of the Copyright Act 1994.
- 2.7. "Copying" means copying as defined in the Copyright Act 1994.
- 2.8. "Copyright work" means those original works referred to in section 14 of the Copyright Act 1994 and further defined in section 2 of that statute or their equivalents under other applicable law and includes a work of joint authorship.
- 2.9. "Creator" means any person who produces, invents, discovers, originates, develops or puts into practice any intellectual property and "create", "created" and "creating" have corresponding meanings.
- 2.10. "Dramatic work" means a dramatic work as defined by the Copyright Act 1994.

- 2.11. "Excluded copyright work" means:
- a. A monograph, journal article, book or conference paper whether first published in hard copy or in some other format; and
  - b. Except where expressly and separately commissioned by the University independently of any employment agreement
    - (i) A dramatic work;
    - (ii) The words of a song;
    - (iii) A musical work;
    - (iv) A work of fine art;
    - (v) Instructional material.
- 2.12. "Instructional material" means any copyright work prepared specifically for the purpose of assisting teaching and learning.
- 2.13. "Intellectual Property" means any discovery, innovation, invention, form, shape, sound, image, expression, technique or process which is the product of skill, effort or intellect and includes:
- a. Copyright works and performances;
  - b. Patentable and potentially patentable subject matter and associated know how;
  - c. Plant varieties and invented life forms;
  - d. Designs, registrable or otherwise;
  - e. Databases and other valuable or potentially valuable information, including research outcomes and records;
  - f. Material subject to an obligation of confidence;
  - g. Layout designs for integrated circuits;
  - h. Signs or insignia of origin, quality, reputation, or commercial connection;
  - i. Registered and unregistered trademarks and business names;
  - j. Instructional material.
- 2.14. "Intellectual property right" or "right to intellectual property" means any claim, right or interest in intellectual property which is

enforceable under the law of New Zealand or any other country, whether by contract or direct operation of law.

- 2.15. "Layout design" means a layout design as defined in the Layout Designs Act 1994.
- 2.16. "Licensing scheme" means a licensing scheme as defined in the Copyright Act 1994.
- 2.17. "Member of the University" includes staff, students, and officers of the University.
- 2.18. "Moral rights" are the rights conferred on authors and others under Part IV of the Copyright Act 1994 or equivalent provisions under the law of the place where such rights are sought to be enforced.
- 2.19. "Musical work" means a musical work as defined in the Copyright Act 1994.
- 2.20. "Performance" means a performance as defined in section 169 of the Copyright Act 1994 or other applicable law.
- 2.21. "Plant variety" means a plant variety as defined in the Plant Variety Rights Act 1987.
- 2.22. "Prescribed copying limit" means the terms and conditions on which a copyright work may be copied or accessed under a collective licensing agreement or where no such terms and conditions currently apply to the work, those laid down in Part III of the Copyright Act 1994.
- 2.23. "Research outcome" means the results and conclusions arrived at as the result of particular research activities and includes products, processes, experimental methods and supporting data.
- 2.24. "Research record" means any information concerning particular research activities recorded in a form capable of reproduction and includes notes, designs, drawings, memoranda and other writings.
- 2.25. "Sign" means sign as defined in the Trade Marks Act 1953.
- 2.26. "Staff member" means a person engaged by the University on an employment agreement.
- 2.27. "Student" means any person other than a staff member enrolled for any course or qualification offered by or on behalf of the University.
- 2.28. "Third party" means any person or organisation other than the University of Auckland or its members.

- 2.29. "Trade mark" means a trade mark as defined in the Trade Marks Act 1953.
- 2.30. "University" means the University of Auckland and all subsidiary companies and entities owned by the University and includes:
- a. Auckland UniServices Limited;
  - b. Such other person or organisation as may be specified from time to time by the Vice Chancellor as being affiliated to the University for the purposes of this policy.
- 2.31. "University resources" means money or property owned, provided or obtained by the University and includes:
- a. Pre-existing intellectual property rights vested in the University;
  - b. Funds obtained by or through the University.
- 2.32. "Work of fine art"
- a. Means an artistic work originally produced in single or limited editions and not intended for industrial application or use; but
  - b. Does not include:
    - (i) a work of architecture being a building or a model or plan for a building; or
    - (ii) a means of storing, accessing or arranging an artistic work.
- 2.33. "Work of joint authorship" means a work of joint authorship as defined in section 6 of the Copyright Act 1994.

### **3.0 POLICY**

#### **3.1. OWNERSHIP ISSUES – STAFF**

Where staff members create any form of intellectual property other than an excluded copyright work

- (i) in the course of their employment, or
- (ii) using University resources

the University is acknowledged as having rights to that intellectual property unless those rights are abandoned under the provisions of clauses 6.3 and 6.4 of this policy, or as specified by the terms of a contract.

- 3.2. The University shall also retain ownership of any physical object or tangible material embodying or incorporating its intellectual property rights.
- 3.3. Subject to the conditions set out in §3.4 and §3.5 the University agrees that copyright in an excluded copyright work belongs in the first instance to the staff member or members who create it unless expressly and separately commissioned by the University independently of any employment agreement.
- 3.4. Where an excluded copyright work is produced in whole or in part in the course of a staff member's employment or using University resources, the University shall have a non exclusive, royalty free, worldwide and irrevocable licence to exploit or use that work either itself or through other academic institutions provided that such exploitation or use
  - a. is confined to the delivery of courses or programmes offered by the University; and
  - b. complies with the prescribed copying limit.
- 3.5. Staff wishing to enter into an agreement of assignment or licence with a third party in relation to any excluded copyright work are to notify the third party of the existence and extent of the University's licence under §3.4.

#### **4. OWNERSHIP ISSUES – STUDENTS**

- 4.1. Students do not relinquish their intellectual property rights by enrolling in a course of study offered by or on behalf of the University.
- 4.2. The University may require students to assign their intellectual property rights to itself or a third party as a condition of participation in a particular research project or exercise. In such cases the student shall be given an explanation of the need for such assignment and an opportunity to seek independent legal advice.
- 4.3. The University agrees that students are to be the first owners of copyright in their theses, dissertations and other assessable work.

#### **5. MORAL RIGHTS**

- 5.1. The University undertakes to respect and protect the moral rights which the law confers on staff and students.

- 5.2. The University accepts that the creators of excluded copyright works are to have their full moral rights as first owners of copyright in such works.
- 5.3. The University will not require staff or students to waive their moral rights as a condition of employment or funding.

## **6. IDENTIFICATION AND NOTIFICATION**

- 6.1. When staff or students create intellectual property to which the University has any claim in law or in terms of this policy and which in the creators' view offers possibilities for commercial exploitation the creators shall promptly make that fact known to the Intellectual Property Manager of UniServices Ltd.
- 6.2. Whenever disclosure is made under §6.1, the University may require the staff or students concerned to provide further details of the intellectual property in question including:
  - a. the date upon which the intellectual property was created; the identity of any person or persons who contributed to the creation of the intellectual property;
  - b. the details of any pre-existing intellectual property which was used in creating the intellectual property;
  - c. whether any person other than the creator claims any entitlement or interest in the intellectual property;
  - d. the details of any University facilities or resources used to create the intellectual property;
  - e. the details of any likely existing or potential use for, or commercial exploitation of, the intellectual property;
  - f. any financial or other interest in a third party which might affect the commercial exploitation of the University's intellectual property;
  - g. the details of all expenditure made, and its source, in relation to the creation of the intellectual property.
- 6.3. Within 90 days of first being notified of the existence of intellectual property, or within 90 days of receiving any additional information requested under the provisions of section 6.2, whichever is the later, the University, shall:
  - a. make a decision as to whether it may wish to exploit the intellectual property; and

- b. communicate that decision to the creator of the intellectual property.
- 6.4. Failure to decide and notify in terms of §6.3 shall be treated as an abandonment by the University of its rights in the intellectual property in question.

## **7. COMMERCIALISATION AND PROTECTION**

- 7.1. The decision whether or not to exploit its rights to intellectual property lies with the University not individual staff or students. The University undertakes to consult with creators as to the appropriate mode of commercialisation.
- 7.2. Staff and students must not do any of the following things in relation to the University's intellectual property:
- a. Apply for the grant of a patent or other registrable intellectual property right; or
  - b. Enter into any contracts, discussions, or negotiations with third parties without the permission of the University; or
  - c. Knowingly act in any way which is inconsistent with the University's intellectual property rights or which diminishes or lessens the value of those rights.
- 7.3. Staff or students who create intellectual property to which §6.1 relates shall provide the University with all reasonable assistance in its exploitation or development including:
- a. Providing information when required;
  - b. Executing specified documents;
  - c. Entering into agreements to undertake particular research or produce other stated outcomes;
  - d. Participating in appropriate marketing or promotional activities.
- 7.4. Where staff or students are unwilling or unable to execute documents as provided in §7.4 above, the University shall be deemed to have an irrevocable authority to execute on their behalf any document which is consistent with the objectives of this policy.
- 7.6. The University will share the nett benefits of commercialisation with the creator on an agreed case by case basis.



## **8. PUBLICATION AND INFORMATION EXCHANGE**

- 8.1. In accordance with its obligation to protect and enhance academic freedom, the University acknowledges the right of staff and students to:
- a. Exchange information with colleagues in other academic and research institutions;
  - b. Present and publish the results of their research and scholarly endeavours in a full and timely way.
- 8.2. Where such exchange, presentation or publication may diminish the value of or opportunity to exploit the contained intellectual property, staff and students must notify the University of their intention to disclose this information. The University may in particular cases, and for a limited period, require staff and students to:
- a. Inform the recipients of information relating to the Intellectual Property or the physical material embodying it that they:
    - (i) may only use the information or material for stated purposes;
    - (ii) may not further disclose the information (or transmit the material) without the consent of the University.
  - b. Suspend publication or presentation of all or part of particular research outcomes for as long as may be reasonably necessary for the University to complete the successful commercialisation of those outcomes or comply with the University's pre-existing obligations to third parties. In normal circumstances such a period would not be expected to exceed twelve months and staff and students would usually be informed of the need to restrict publication or disclosure before they embark on the research in question. Agreements with third parties containing such restrictions must first be submitted to the Deputy Vice-Chancellor (Research) for approval;
  - c. In the case of research in fulfilment of a contract, the terms of the contract related to publication shall apply.
- 8.3. The University shall take all steps necessary so as to ensure that the protection and/or commercialisation of Intellectual Property consistent with the provisions of §8.2 does not unreasonably delay the conferment of a degree or other academic qualification on the creator of the intellectual property.

## **9. ADMINISTRATION AND LEGAL EFFECT**

- 9.1. Where there is any inconsistency between this Policy and an employment agreement with staff, such agreements will prevail over the Policy.
- 9.2. The University is free to waive or relinquish its intellectual property rights whether by agreement, contract or otherwise as circumstances may dictate.
- 9.3. This Policy only relates to intellectual property which comes into existence after 30<sup>th</sup> December 2000.
- 9.4. The University acknowledges that disputes arising from the interpretation or application of this Policy should as far as possible be settled without resort to litigation or other legal process. The University will consult with all interested parties as to how this may be achieved.

### **Audience**

All staff and students of the University.

### **Relevant Legislation**

The Copyright Act  
The Trademarks Act  
The Plant Varieties Rights Act  
The Patents Act  
The Education Act

### **Legal Compliance**

Failure to comply may lead to contractual breaches at all levels, legal disputes and costs.

### **Related Procedures / Documents**

Research Policy Manual

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The University of Auckland  
**Intellectual Property Created  
by Staff and Students Policy**

Approved by:  
Date approved:  
Owned by:  
Prepared by:  
Last reviewed:  
Review date:

Vice-Chancellor  
August 2008  
Registrar & General Counsel  
Deputy Vice-Chancellor (Research)  
2011  
August 2013