

## STATUTE 14.1 - INTELLECTUAL PROPERTY

### Recitals

#### Guiding principles

- (1) This statute and associated intellectual property principles specify the manner in which intellectual property lawfully able to be regulated by the University is to be developed, protected, managed and commercialised.
- (2) As a matter of general principle, the University asserts ownership of intellectual property, other than scholarly works, created by its academic staff. This is congruent with Commonwealth law and reflects the prevailing expectation of national granting bodies. This approach provides clarity and security of ownership rights, thereby promoting the commercialisation of research and the transfer of knowledge to the wider community. In relation to students, honorary appointees and visitors, the University asserts ownership only of intellectual property which is teaching material or the subject of specified agreements.
- (3) In pursuit of its objects, the University strives to deal expeditiously, expertly and thoroughly with opportunities to commercialise the intellectual property in which it asserts rights, and in so doing, seeks to realise its full value for creators, the University and the wider community.
- (4) The University will administer this statute and the intellectual property principles in a manner that ensures that proper regard is given to the interests of creators, including by their sharing in the financial and other benefits of what is created, and that any assignment of intellectual property owned by the University is not inconsistent with these guiding principles.

#### 14.1.1 Interpretation

- (1) In this statute, unless the contrary intention appears-

**“academic staff”** means a member of staff of the University who is employed in any capacity as either a research or teaching member of the staff, or both, irrespective of the date of commencement of employment and whether or not that member of staff is on any form of study leave.

**“create”** means bring into existence or discover.

**“creator”** means any member of staff or any student who creates any intellectual property whether or not in conjunction with other persons.

**“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 other scholarly activity.

**“intellectual property”** includes:

- (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 trademarks, service marks and commercial names and designations;
- (i) databases, computer software and related material not otherwise coming within any of the other designated items of “intellectual property”;
- (j) scientific discoveries; and
- (k) know-how and other proprietary information associated with any of the other designated items of “intellectual property”.

**“intellectual property principles”** means the principles embodied in a standing resolution of Council from time to time.

**“invention disclosure policy”** means the University’s policy of mandatory invention disclosure as approved by Council from time to time.

**“scholarly works”** means any article, book, musical composition, creative writing or like publication or any digital or electronic version of these works that contains material written by any member of academic staff, an honorary appointee, a visitor or a student based on that person’s scholarship, learning or research, but does not include work that is teaching material or any work that comes within the terms of the University’s invention disclosure policy.

**“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 all employees of the University.

**“student”** means a graduate student, an undergraduate student or a person designated as a student as defined in the Melbourne University Act 1958 (Vic.).

**“teaching material”** means all versions, whether digital or otherwise, of information, documents and materials created or used for the primary purpose of teaching and education at the University, including the permitted adaptation or incorporation of the scholarship, learning or research of the relevant member of academic staff, honorary appointee, visitor or student for that primary purpose, and without limiting the generality of the foregoing, includes lecture notes that are made available to students, computer-generated presentations, course guides, overhead projector notes, examination scripts, examination marking guides, course databases, websites and multimedia-based courseware.

**“visitor”** means a person located at the University as described in the intellectual property principles.

- (2) Any reference to legislation in this statute is a reference to that legislation as amended or replaced from time to time.

#### **14.1.2 Ownership of intellectual property**

- (1) All rights (other than moral rights) to intellectual property created by staff in the course of or incidental to their employment are owned by the University, except in the case of scholarly works. Rights to scholarly works are owned by the member or members of academic staff who created such works.
- (2) Except where section 14.1.3 applies, the University has no rights to intellectual property solely developed by students, honorary appointees or visitors.
- (3) The University has the power to enter into any specified agreement on such terms as it thinks fit, whether or not it is or may become the owner of any intellectual property otherwise identified or referred to in the specified agreement.

#### **14.1.3 Ownership of intellectual property created by students, honorary appointees or visitors**

All rights (other than moral rights) to intellectual property created by any student, honorary appointee or visitor whilst engaged in an activity which is the subject of a specified agreement are owned by the University. All rights in relation to teaching material created by a student, honorary appointee or visitor are owned by the University. All other rights to intellectual property, including in relation to scholarly works, are owned by the student, honorary appointee or visitor to the extent to which that person created such works.

#### **14.1.4 Scholarly works**

- (1) The author of scholarly works created whilst the author is a member of academic staff or a student, honorary appointee or visitor of the University, is deemed to have granted to the University, unless otherwise agreed by the University, a non-exclusive, royalty-free, worldwide and irrevocable licence to use for educational, teaching and research purposes only, those scholarly works for the duration of the period in which the intellectual property rights subsist in the scholarly works, whether or not the relevant member of academic staff, honorary appointee or visitor is still employed or engaged by the University, or the student is still enrolled at the University.
- (2) In exercising its rights under the licence granted to the University pursuant to section 14.1.4(1), the University recognises the moral rights of the author, including the rights of attribution and integrity of authorship, and that any use is for the University's benefit only and not for the personal exploitation or gain of any third parties, including other members of staff or students.

#### **14.1.5 Vice-Chancellor as attorney**

A creator will, as required by the University, execute all documents and do all acts that may be necessary or desirable to give full effect to the provisions of this statute and the intellectual property principles. If a creator fails to execute any document or do any thing for that purpose, the vice-chancellor may execute all such documents and do all such acts

as his or her attorney under power in accordance with the terms of any enrolment declaration signed by a student or any terms of employment or engagement of a member of staff, honorary appointee or visitor. The vice-chancellor may exercise such power of attorney even if the University benefits from such power.

#### **14.1.6 Assignment of intellectual property**

- (1) The University may assign any intellectual property owned by the University to third parties, including creators, on such terms as it thinks fit or as otherwise provided in any specified agreement to which the University is a party.
- (2) The University may also acquire any intellectual property from third parties, including creators, on such terms as it thinks fit or as otherwise provided in any specified agreement to which the University is a party.
- (3) Unless intellectual property has already been assigned or is otherwise the subject of an existing dealing by the University, including under the terms of a specified agreement, a creator may by notice in writing apply to the University for intellectual property created by that creator to be assigned to that person or a designated third party. Any assignment by the University will only take place if agreement is reached between the University and the applicant, and the applicant or the designated third party, as the case may be, acquires any rights to the intellectual property only by these means.

#### **14.1.7 General provisions**

- (1) Council may establish intellectual property principles which are to be used for the purposes of administering this statute, including dealing with the interests of creators and giving effect to the guiding principles set out in the recitals to this statute. In the event of any inconsistency, the terms of this statute prevail.
- (2) A creator must comply with the terms of the invention disclosure policy. The University will take into account, along with other relevant factors, any wishes of the creator made known to the University in reaching its own decision as to whether any intellectual property so disclosed to the University or any University owned company is either:
  - a) to be protected at law and, if applicable, later commercialised for the benefit of the University and other stakeholders; or
  - b) otherwise to be made available for the general purposes of the creator.
- (3) Where the University deals with intellectual property for the purposes of profit or gain, it will share any net proceeds of commercialisation with the creators of that intellectual property in accordance with the intellectual property principles.
- (4) Any power or right to be exercised by the University under this statute may be exercised by the vice-chancellor or nominee, except that the power of attorney referred to in section 14.1.5 must be exercised personally.
- (5) All intellectual property created by staff, honorary appointees, visitors or students prior to the date of coming into effect of this statute is intellectual property governed by the terms of the University's intellectual property statute in force at that time. The obligation to

show that the intellectual property was created prior to the date of coming into effect of this statute rests with the creator. All other intellectual property created by staff, honorary appointees, visitors or students is governed by the terms of this statute.

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