

## INTELLECTUAL PROPERTY POLICY

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Related Documents	GCA International Student Support Services Policy GCA Refunds Policy GCA Student Welfare Policy UBSS Academic Appeals Policy UBSS Academic Progression & Intervention Policy UBSS Course Review Policy UBSS Grievance and Appeals Policy (Academic) UBSS Grievance Policy (Non-Academic) UBSS Professional Development Policy UBSS Academic Staff Qualifications and Equivalence Policy UBSS Course Delivery by Third Party Providers Policy and Procedures
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## 1 Context

This policy provides guidance on the approach taken by UBSS in relation to intellectual property, including its ownership, protection and exploitation. It is intended that this policy will guide UBSS's interactions with students, staff, and research collaborators including funding bodies, other research institutions and industry partners.

UBSS is committed to fostering an environment where academic excellence, teaching, learning, scholarship, research and innovation can flourish and where participants in these endeavours are rewarded for their efforts.

The primary objective of this policy is to establish flexible mechanisms by which UBSS is able to identify, protect, manage and commercialise its intellectual property. By successfully meeting this objective, UBSS and its staff and students will be in a stronger position to benefit from the:

- attraction of industry and government research funding;
- establishment of local and international reputation for research excellence;
- establishment of linkages with other likeminded institutions and bodies;
- generation of financial returns from commercialisation;
- growth of knowledge - based industries through research and its commercialisation; and
- generation of national wealth, through new products, services and employment

## 2 Scope

### 2.1 Rationale

This policy applies to all enrolled students participating in coursework units in all courses of study at UBSS, and to all staff in relation to academic activities associated with their employment at UBSS. The policy also applies to consultants, and other persons generating intellectual property in collaboration with UBSS staff or students, or engaged by UBSS to undertake a specific activity, and it may also apply from time to time to other persons by agreement.

Subject to any agreement to the contrary specifically approved by the Dean in writing, this policy shall form part of the terms of employment of all UBSS staff. This document should be read in conjunction with other related policies. (see Related Documents)

### 2.2 Legislative Context

- The Higher Education Support Act 2003 (Cth) (HESA)
- Tertiary Education Quality and Standards (TEQSA) Act 2011 (Cth);
- Higher Education Standards Framework (Threshold Standards) 2015;
- The Educational Services for Overseas Students Act (ESOS): 2000 The National Code
- Education Services for Overseas Students Regulations 2001;
- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007;
- Patents Act 1990 (Cth);
- Copyright Act 1968 (Cth);
- Trade Marks Act 1995 (Cth);
- Trade Practices Act 1974 (Cth);

- Designs Act 2003 (Cth);
- Circuit Layouts Act 1989 (Cth);
- National Principles of Intellectual Property Management.

### 3 Definitions

Item	Definition
<i>Academic activity</i>	Includes and is not limited to developing, delivering, attending or otherwise participating in lectures, tutorials or other modes of delivery (e.g. internships); planning, producing or supervising research; or otherwise sharing knowledge, experience, or skills with others.
<i>UBSS intellectual property</i>	Intellectual property that is owned by UBSS according to the terms of this policy or otherwise as a matter of law.
<i>UBSS project</i>	A self-contained program of work or research administered by or on behalf of UBSS which is funded by: <ul style="list-style-type: none"> <li>• an external source; or</li> </ul> a specific direct allocation of significant infrastructure support or other UBSS resources beyond that which is ordinarily provided by UBSS.
<i>Commercial benefit</i>	Any benefit that UBSS receives (whether income in-kind or otherwise) from the development of intellectual property , including signing fees, royalties, lump sum licence fees, milestone payments, minimum annual payments, reimbursements of patent expenses, dividends, damages from infringement proceedings and proceeds from the sale of shares but excluding research and development funds, consulting funds, returns from direct investment by UBSS or a commercial company, and any encumbered revenues until the encumbrance is lifted.
<i>Commercialise</i>	To make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise or otherwise utilise or exploit intellectual property for the purpose of generating financial or other commercial gains.

<b>Item</b>	<b>Definition</b>
<i>Commercialisation costs</i>	Any amount (including, without limitation, any Australian or foreign taxes, charges or other imposts, or any legal costs) UBSS incurs to Protect or commercialise intellectual property, including (but not limited to) costs in relation to registration of intellectual property (e.g. patent protection), licensing-in of third party intellectual property , legal counsel, specialised technical services, consultancies, travel and accommodation, production of prototypes, and taxes and other fees, duties and charges.
<i>Confidential information</i>	Inventions, discoveries, knowledge, methods, processes, techniques, potential patents, chemical compositions, biological materials trade secrets, and other information of any kind which, because of its confidential character, is capable of protection by contractual or equitable means, and includes information of a valuable commercial or technical character.
<i>Copyright</i>	A type of legal protection for people who produce things like writing, images, music and films. It is a legal right to prevent others from doing certain things (such as copying and making available online) without permission. First party copyright material refers to any material created by UBSS staff as part of their employment in which copyright has not been transferred or exclusively licensed to a third party. Third party copyright material includes both licensed and unlicensed third party copyright material. “Licensed third party copyright material” is any copyright protected material for which the terms of use are governed by a licence or any other form of agreement, e.g. UBSS holds licences for educational copying with the Copyright Agency Limited (CAL) for hard copy and electronic reproduction and communication; and with screen rights for copying from radio, television and cable. “Unlicensed third party copyright material” is any copyright material not governed by an agreement between the copyright owner and the user.
<i>Copyright work</i>	Any artistic, literary, dramatic, or musical work, sound recording, cinematograph film, television broadcast, sound broadcast or published edition of work as defined by the Copyright Act 1968 (Cth). Monographs and scholarly works including manuscripts, lecture notes and other materials prepared for academic activities are also included.
<i>Course</i>	Program of study, in whole or part, conducted by or on behalf of UBSS to any student.

<b>Item</b>	<b>Definition</b>
<i>Course materials</i>	<p>Means:</p> <ul style="list-style-type: none"> <li>any copyright work created for use in, or in connection with a course, or unit offered or to be offered by UBSS or affiliated education agency; and</li> </ul> <p>any materials commissioned by UBSS specifically for use in, or in connection with a course, or unit offered or to be offered by UBSS or by an affiliated agency unless there is an agreement to the contrary.</p>
<i>Exceptional UBSS resources</i>	Resources of UBSS which includes facilities, funds, services, equipment, paid leave, staff time and support staff in excess of those normally used or available to staff for producing course materials and/or work related materials
<i>Intellectual property</i>	Those rights arising from the output of the human intellect. intellectual property rights arise in relation to certain types of subject matter and those rights can be sold, purchased and licensed.
<i>Moral rights</i>	Moral rights as defined the Copyright Act 1968 and includes a right of attribution of authorship, a right not to have authorship falsely attributed, and a right of integrity of authorship.
<i>Net revenues</i>	The revenue remaining after the deduction by UBSS of its commercialisation costs from commercial benefits.
<i>Notice period</i>	A period of 90 days following UBSS's receipt of a notification during which period UBSS will decide whether or not to proceed with the protection or commercialisation of intellectual property. The notice period may be extended with the consent of the staff or student who gave notice.
<i>Protect</i>	Any action that is necessary to protect a claim in connection with intellectual property and includes, without limitation, registration anywhere in the world or enforcement or assertion of that intellectual property in any legal proceedings.

<b>Item</b>	<b>Definition</b>
<i>Publication</i>	Means research outputs, including: <ul style="list-style-type: none"> <li>• books and book chapters;</li> <li>• publications in academic, professional or other journals;</li> <li>• conference presentations;</li> <li>• technical and other reports;</li> <li>• monographs;</li> <li>• abstracts;</li> <li>• poster presentations;</li> <li>• electronic and online publications;</li> <li>• software;</li> <li>• creative works and designs; and</li> <li>• exhibitions or performances.</li> </ul>
<i>Researcher</i>	All academic staff who are employees of UBSS, whether full-time or part-time, but does not include staff who are consultants or seconded to UBSS if they are not employees under contract of service, and does not include students except if they are also employed as academic staff in which case it will include them in that capacity alone.
<i>Scholarly material</i>	Copyright work created by staff based on that staff member's scholarship, teaching or research, but does not include work that is a computer program, teaching material or administration material.
<i>Specifically commissioned</i>	Where particular consideration (including financial and or relief time) is provided or offered by UBSS by agreement.
<i>Staff</i>	Employees of UBSS including academic and professional staff whether employed on a full-time, part-time, contract, sessional, or casual basis and does not include visitors, honorary senior research fellows, honorary adjunct appointees, honorary conjoint appointees or honorary employees of another institution or entity who are physically located at UBSS.
<i>Students</i>	UBSS students enrolled in postgraduate coursework courses, postgraduate research courses, postgraduate Students studying in part-time, full-time, by distance education, on-campus and online modes, those students on approved leave, and those enrolled in single non-award postgraduate units.
<i>Teaching purposes</i>	Means for the purposes of teaching and education and does not mean for the purposes of commercialisation.

Item	Definition
<i>Visitor</i>	<p>Any person who is not a staff member or student of UBSS (but who may be a staff member or student of an Australian university), who:</p> <ul style="list-style-type: none"> <li>• takes part in research, teaching or other activity that would normally be conducted by a staff member or student; or</li> </ul> <p>(b) visits a part of UBSS in which research or scholarship, or any related activity, is conducted at the time they create any intellectual property.</p>

## 4 Application

In accordance with UBSS's vision, intellectual property developed by UBSS researchers should benefit:

- the wider community, in terms of technology transfer and engagement;
- UBSS itself, in terms of its own reputation (distinguishing UBSS 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 intellectual property.

UBSS provides an environment that encourages researchers to develop innovative ideas, supports commercialisation of these ideas and wishes to share in the benefits arising from commercialisation of intellectual property developed by UBSS researchers.

This policy is consistent with the National Principles of Intellectual Property Management for Publicly Funded Research (2001).

## 5 Ownership of Intellectual property

The ownership of any intellectual property created by persons affected by this policy will be determined by the terms of this policy, unless such persons have entered into an agreement with UBSS that overrides this policy.

### 5.1 Ownership by UBSS of intellectual property

Except as otherwise agreed in writing by the Dean, or stated in this policy, UBSS asserts legal and beneficial ownership of intellectual property including the associated copyright to all works created by staff, students, visitors, honorary senior research fellows, honorary adjunct appointees, honorary conjoint appointees, and volunteers where works were created:

- in the course of their employment by UBSS;
- where generation of the intellectual property has required use of UBSS resources;



- in which UBSS has contributed other UBSS owned intellectual property or has made a specific contribution of funding other than salary payable pursuant to a contract of employment, scholarship, resources, facilities or apparatus; or
- as a result of being specifically commissioned by UBSS to produce the intellectual property.

Upon termination of any visit, appointment or involvement with an UBSS project, a visitor or person holding an honorary adjunct or honorary conjoint appointment should consult the Dean if they wish to continue to use or have access to any UBSS intellectual property.

## 5.2 Licensing of staff intellectual property

By entering employment with UBSS, staff members grant to UBSS a perpetual, non-exclusive royalty-free and irrevocable licence to use and adapt intellectual property, including course materials and scholarly materials, artistic, dramatic, musical works and other subject matter created by that person for UBSS's academic activities. This licence ownership of administration includes the right to sub-license and to commercialise intellectual property created as a result of employment with UBSS. The non-exclusive right to use such material continues should the staff member leave UBSS employment.

## 5.3 Ownership of materials specifically commissioned

UBSS asserts legal and beneficial intellectual property and copyright ownership of all intellectual property that it has specifically commissioned. UBSS may, at its discretion, give the creator(s) of specifically commissioned intellectual property a non-exclusive licence to use these materials for teaching purposes only provided that such a licence will not extend to use of these materials in direct competition with UBSS.

A commission will be evident if an arrangement or agreement has been signed by the President and it may (or may not) include provision for a financial benefit or non-financial benefit to the staff member, and/or a period of release from teaching duties, or a lighter teaching load during a period.

Where a specifically commissioned material uses, adapts or includes existing course materials, scholarly materials, artistic, dramatic, musical or other subject matter, the staff member will have the right to use those materials subject to the conditions as further outlined in this policy. Where UBSS does not commercialise commissioned course materials the creator may request assignment of the rights to the creator for commercialisation by that individual (or team) subject to agreement including granting a non-exclusive licence to UBSS for teaching purposes.

## 5.4 Ownership of course materials

### 5.4.1 Course materials created in the course of employment

If a staff member creates any course material in any medium (including multi-media) in the course of their employment at UBSS, UBSS will own the copyright and any other form of intellectual property vesting in that course material. As such, UBSS has the right to use, reproduce, publish, communicate, perform, broadcast, adapt and disseminate that course material for its academic activities. However, UBSS will recognise the staff member's moral rights. Use of course material will involve consultation with the staff member concerned where this is practical.

Where an UBSS staff member is subsequently employed at another institution, the course material they created while employed at UBSS must not be used for teaching purposes at the other

educational institution without the express permission of UBSS and/or until such time as a written agreement is drawn up giving the previous employee of UBSS the right to use the material.

#### 5.4.2 Ownership of course materials created with the use of exceptional UBSS resources

Where course materials are, or may be, created in whole or in part with the use of exceptional UBSS resources, a written agreement is to be developed between the staff member and UBSS as soon as practicable which specifies ownership of the intellectual property in the course materials and rights to revenue in the event of any commercialisation of the course materials and any intellectual property generated from the production of the course materials.

In the absence of a written agreement, UBSS will own the course materials, but the staff member(s) who provided content for the course materials will be entitled to at least 33.3% (one-third) of the net revenue of any commercialisation of the course materials by UBSS. Where more than one staff member provided content for the course materials, the net revenue should be shared in proportions as may be agreed by them or in the absence of a formal agreement, benefits will be equally shared.

#### 5.4.3 Licensing

Each staff member, by virtue of their employment and this policy, grants to UBSS, for use and dissemination in the delivery of UBSS courses and degrees, a non-exclusive, non-transferable, royalty-free, perpetual licence to use course materials that are:

- brought with the staff member upon employment commencing at UBSS and used in the course of their employment at UBSS; or
- developed during the course of the staff member's employment at UBSS.

Where the creator of intellectual property which was created prior to the commencement of employment with UBSS brings or intends to bring intellectual property to UBSS to be used within the course of their duties or otherwise, they may be required to assist UBSS in determining whether that intellectual property is entirely owned by them by providing UBSS with:

- an inventory of that intellectual property;
- all documents relating to the ownership of such intellectual property, including without limitation any contract, agreement, licensing agreement, or another institution's intellectual property policy; and
- written warranties that the use of such intellectual property does not infringe the rights of any third parties.

In its use, of course material, UBSS will consider the reputation of the creators. UBSS 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 UBSS course and unit delivery.

UBSS also reserves the right to reach an agreement with a staff member in relation to copyright in course materials which varies the terms of this sub-section.

Any licence granted pursuant to this section will be subject to the following conditions:

- the licensee will not do anything that could jeopardise the rights of the licensor including actions that could jeopardise the protection or enforcement of the licensor's rights and commercialisation such as the disclosure of confidential information or know-how without the consent of the licensor;

- the licensee will not compete with the licensor in the commercialisation of the intellectual property;
- the licensee shall not assign, licence or sub-licence or otherwise create rights or obligations for the intellectual property without the express written consent of the licensor; and
- in the absence of the scholarly publication arising as a part of a staff member's duties or an overriding contractual obligation with a third party, a staff member can presently assume, in line with past practice, that they will retain ownership of the copyright in scholarly material created in the course of their employment. UBSS gains an unrestricted licence to use the work free of charge.

#### 5.4.4 Assignment of ownership by UBSS

UBSS reserves its right to transfer the ownership of its intellectual property to third parties in accordance with this policy, or otherwise, where practicable, following consultations with the creator(s) of the intellectual property. Note: this does not relate or apply to course material and patent revenue distribution.

UBSS will assign its rights to the creator if:

- the Dean decides that UBSS will not become involved in the commercialisation of the intellectual property;
- the Dean fails to make a decision on UBSS's involvement in commercialisation within a timely and fair manner; or
- UBSS, having decided to become involved in commercialisation, fails to commence any steps necessary to do so within a period of 180 days from the date of notification as received by the Dean.

#### 5.4.5 Dealings by staff members or students

Except where expressly permitted under this policy, no staff member or student may apply for in their own name, assign, license or otherwise deal with intellectual property which is the property of UBSS without the written consent of the Dean.

## 6 Postgraduate Students

Where postgraduate students are involved in activities that could lead to the development of intellectual property over which UBSS or a third party may claim ownership, the following conditions will apply:

- participation in the research will not interfere with the assessment of the student's academic performance;
- the student's rights in the intellectual property in any thesis or publications arising from the research will be protected;
- the student will receive consideration and returns commensurate with those provided to staff, including a say as to the integrity of the intellectual property;
- the student's future career choices will not be closed by the choice to work in a confidential area of research;
- it will be made clear to students what the nature of the work is before they undertake the activity that leads to the claimable intellectual property;
- any confidentiality and ownership of intellectual property agreement will only be signed by students after they have been first advised to obtain independent advice; and
- any delays in publication of the thesis that arise from a confidentiality agreement should be limited to a maximum of two years.

## 6.1 Student assignment of intellectual property to UBSS

A student cannot be required by UBSS to assign their intellectual property:

- in order to qualify for enrolment, or to remain enrolled in a course, or to complete the requirements of a course in which he or she has enrolled, under any circumstances; or
- otherwise, including where that student is engaged in or otherwise participates in any third-party activity, unless that student does so freely and with consent.

Subject to the provisions of any prior agreement between the student and UBSS, where a student creates intellectual property jointly with a staff member or a visitor, UBSS will negotiate with that student in connection with the commercialisation of that intellectual property.

If a student wishes to participate in any third-party activity or in any activity that has, or may in future create intellectual property that may be the subject of commercialisation, then before that student is permitted to begin that activity:

- UBSS may, as a condition of the student participating in that activity, require the student to:
  - assign their intellectual property; and
  - give consent with respect to any moral right subsisting in a work, to the extent that either of these relate to or affect the activity concerned.

It is the responsibility of (as the case may be):

- the person who is in charge of that activity (for example, the chief researcher); and
- the student's supervisor, to notify the student about all requirements for participating in that activity including, without limitation:
  - any requirement to assign that student's intellectual property or give consent in relation to any moral right he or she may have in the relevant work; and
  - especially where a student is required to assign their intellectual property or give consent in relation to any moral right he or she may have in a work, a recommendation that the student should seek advice (which may include legal advice).

If a student is required to do anything in relation to assigning intellectual property to UBSS, then that student will be given a reasonable period (normally one month) to review all documentation and seek appropriate advice (including legal advice) and respond, which in most cases should not be less than 14 days. However, the response period may be reduced by UBSS, depending on what is reasonable under the circumstances including taking into account any obligations to third parties that UBSS may have in respect of that activity.

If a student does not agree to do anything required, or else does not respond to a request to do so, on or before the response deadline, then UBSS may decline to permit the student to participate in that activity.

Students who assign their intellectual property to UBSS are, subject to any agreement, entitled to a share of commercial benefits from the commercialisation of the intellectual property. UBSS will pay any stamp duty assessable on any instrument that UBSS deems necessary to give effect to that assignment.

## 6.2 Student ownership of copyright in theses

Students own the copyright in their theses and projects. UBSS reserves the right, and under this policy asserts that right, to retain the original or copy of any drawings, models, designs, plans and specifications, essays, theses or other work executed by a student as part of their course, or submitted for any award or competition conducted by UBSS. Such retention is not to affect any copyright or other Intellectual property right that may exist in such student work.

In cases where UBSS exercises, or wishes to exercise, its right, the students shall grant UBSS a non-exclusive, royalty free, perpetual, irrevocable, world-wide licence (including the right to sub-license) to make available for consultation, loan, or copying, and/or UBSS Librarian subject to their respective operating/circulation rules. Any copy of a thesis deposited is subject to any pre-existing lawful confidentiality agreement.

## 6.3 Student research at other institutions

Where students are undertaking research as part of a project between UBSS and an external sponsor or on a commercially-oriented project, UBSS may request an assignment of the student's intellectual property, in most cases before allowing the student to participate in that particular project. This permits UBSS to comply with the terms of any contract it may have with the sponsor, and to be able to commercialise all of the Intellectual property resulting from the project. The assignment of intellectual property does not include assignment of the copyright in the student's thesis or in publications authored by them and arising out of their studies. UBSS recognises that students must retain the ability to control the reproduction of the text of their thesis to ensure that their careers benefit from publishing the results of their work.

## 6.4 Students and third party funding bodies

For a student, whose research program is supported in whole or part by a third-party funding body the ownership of any intellectual property developed by the student shall be determined by any agreement between the student, UBSS and the third-party funding body.

## 6.5 Student participation in UBSS projects

A student who participates in an UBSS project will be bound by the provisions in this policy as if they were participating in an UBSS project as a staff member. The student will share in commercial benefits, if any, with all other creators according to UBSS policies.

Where the ownership of intellectual property generated by a student has been determined as belonging to UBSS, then the student will be accorded the same rights and obligations as a staff member for the purposes of this policy.

Where the ownership of intellectual property generated by a student has been determined to be the student's, then the student will be entitled to receive payments from the net revenues (if any) received by UBSS. In such an event, UBSS will:

- enter into a separate agreement with the student which will set out appropriate entitlements to such proceeds;
- will ensure that the academic progress of a student affected by this policy is not hindered by the provisions of this policy; and

- will ensure that the examination of theses is not affected by this policy without the consent of the student.

## 6.6 Supervisors

Supervisors electing to supervise a student in an area likely to lead to claimable intellectual property shall ensure a confidentiality and intellectual property assignment agreement is completed with the student before the work is commenced.

Where intellectual property with commercial potential has been created jointly by a student and the supervisor or other UBSS staff, UBSS may also request the student to assign their interest in that intellectual property (except copyright in the student's thesis) to UBSS. Note that some projects may not be available to students who choose not to sign a confidentiality and intellectual property assignment agreement. The student will then be free to choose another project without prejudice.

# 7 Reporting and Commercialising Intellectual property

## 7.1 Staff and student responsibilities

Staff and students have responsibilities in relation to intellectual property protection including, where appropriate, the maintenance of research laboratory records and the prevention of premature public disclosure of research results prior to obtaining intellectual property protection.

## 7.2 Reporting intellectual property

Staff and students who believe they have created any intellectual property for which UBSS asserts ownership as outlined in this policy, shall, as soon as possible after its creation:

- report that fact to the Dean; and
- if directed, provide full details of the intellectual property created and the names of the creators.

UBSS will make a determination as to whether it will commercialise the intellectual property in accordance with the below.

Staff and students who create exempt intellectual property, are required to provide a copy of the thing to which that intellectual property relates to their Dean within 90 days of its creation or modification, or immediately if the staff or student wishes to commercialise the intellectual property.

In the event that the Dean considers that the intellectual property reported in accordance with this policy is intellectual property over which UBSS asserts ownership, then that Dean shall:

- notify the creator within seven days;
- together with the creator take such actions as required to protect the value of the intellectual property; and
- provide sufficient disclosure to the Dean to enable assessment of the value of the intellectual property.

### 7.3 Importance of non-disclosure of new intellectual property

In order for UBSS to comply with National Principles of intellectual Property Management for Publicly Funded Research (2001), staff members and students should be conscious of the need to avoid premature disclosure of research results to third parties prior to notifying the Dean and consideration of the need to obtain intellectual property protection.

Before determination, staff members, students, and other related persons should not:

- hold any discussions with any person external to UBSS concerning UBSS intellectual property before registration, unless required by any funding or UBSS project agreement; and
- publish any information about any UBSS intellectual property before notifying the Dean.

Sometimes, it may be important to protect intellectual property that will not have commercial value. In such cases, the Dean will advise how to proceed.

If the Dean is advised or believes that the confidentiality of certain information needs to be maintained for the intellectual property to be protected or successfully commercialised, the Dean is required to:

- conduct all consultations in confidence, and
- recommend a time and procedures for the release of the intellectual property

### 7.4 Decision time frame

Commercialisation is a complex and often lengthy process and requires commitment and diligence from those involved. There are a variety of pathways to commercialisation and numerous steps involved in the process, which will be unique in almost every case. Staff and students will use their best endeavours to assist in the commercialisation of intellectual property.

UBSS will decide whether to proceed with the protection or commercialisation of intellectual property within a period of 90 days of the Dean receiving notice of the potential intellectual property (notice period).

The notice period may be extended with the consent of the staff or student who gave notice.

If UBSS makes no decision by the end of a notice period (or any extension of it) the creator is free at their cost, to protect or commercialise the reported intellectual property in any manner they choose.

### 7.5 Assessment

After receiving notice of the potential for intellectual property, UBSS will determine whether it wishes to protect and/or commercialise the intellectual property. While this takes place, the creators shall take all reasonable steps to protect that intellectual property by avoiding public disclosure, such as publication or presentation (including submission of journal or conference abstracts). UBSS encourages staff and students to seek advice from the Dean on how best to do this.

In making a decision, the Dean will take into account:

- the creator's interests in publishing scholarly material;
- the wider obligation of disseminating research findings, while also ensuring that intellectual property with commercial value is protected;



- the direct and indirect contribution made by UBSS to the creation of the intellectual property;
- the nature of the intellectual property and the extent of a patent or other protection methods will assist the development and subsequent commercialisation of the intellectual property;
- whether the grant of a patent is desirable for UBSS to maintain an interest in the further development of the intellectual property; and
- the probable commercial benefits to UBSS.

All decisions and the associated reasons of the Dean are to be reported to the President.

Where the President is required to make an assessment of UBSS intellectual property, the President shall make reasonable efforts to consult, on a confidential basis, an appropriate expert in the relevant field in order to obtain an independent evaluation of UBSS intellectual property in relation to its commercialisation. Such consultation shall involve the signing of confidentiality agreements.

## 7.6 Notice of determination regarding commercialisation

Within the notice period, UBSS will advise the creators in confidence whether:

- it has decided to commercialise the intellectual property;
- it has decided not to commercialise the intellectual property; or
- it 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 Dean.

In situations where complex commercial or technical assessment and due diligence is required, UBSS may take up to 18 months to make a decision on whether to commercialise. UBSS will consider any external issues, such as proposed publication deadlines and the progress of competing researchers, when determining how and when intellectual property should be protected.

If UBSS decides that it wishes to protect or commercialise intellectual property, then the Dean will notify:

- the staff member or student concerned; and
- that staff or student's Faculty member of staff.

Where the decision is made to proceed with the protection or commercialisation of intellectual property, the contributors/originators will:

- be notified within a timely manner and be requested to complete an assignment of their interests in the intellectual property to UBSS;
- provide information promptly upon request, attend meetings with potential licensees and advise on further development/s; and
- have the opportunity to participate in processes associated with the protection and commercialisation of intellectual property that they have helped create.

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



## 8 Exploitation of Intellectual Property Owned by UBSS

UBSS will use reasonable endeavours to commercialise intellectual property that is considered suitable for commercialisation. The process of commercialisation will be undertaken in collaboration with the creators/inventors, considering cultural and spiritual aspects and act in accordance with UBSS's policies. It will be UBSS's decision whether to proceed with, continue, or exit from commercialisation activities.

Persons who create intellectual property over which UBSS asserts ownership, are entitled to a share of any commercial benefits that UBSS receives from commercialisation. The sharing of commercial benefits with creators does not apply to any use of teaching materials.

Commercialisation arrangements executed prior to the date of this policy will remain in accordance with the arrangements and policies in force at that time.

The individuals named as creators and the sub-division of the net revenues distributed to them shall be based upon the written agreement of creators. Any difficult negotiations on the ownership of intellectual property and returns to contributors may be referred to the Dean for advice and mediation.

The Dean will issue operational directives for the key administrative decisions and processes for commercialisation of intellectual property consistent with this policy, Governing Board directives, and UBSS delegations.

### 8.1 Commercialisation assigned to staff members or students

If UBSS decides not to proceed with the exploitation of the intellectual, subject to the staff member or student having complied with this policy, the staff member or student may request UBSS to assign the intellectual property to them.

Upon assignment, the staff member or student will be free to protect and commercialise the intellectual property at their discretion and cost, subject to the interests of any third-parties.

It is a condition of assignment of the intellectual property to the staff member or student that UBSS receives a benefit amounting to 33.3% (one-third) of any net revenue received from commercialisation.

UBSS retains a non-exclusive right to use the intellectual property for its academic activities. UBSS will complete an agreement to this effect with the staff member or student.

### 8.2 Sharing in the benefits of commercialisation

Without limiting UBSS's discretion in undertaking commercialisation of intellectual property, UBSS will consult with the creator of the intellectual property before determining the appropriate commercialisation pathway to be taken. UBSS recognises that the commercial development of products resulting from use of the traditional knowledge of indigenous peoples should be subject to benefit-sharing negotiations with the providers of such knowledge. UBSS recognises the need to conform to the relevant Indigenous protocols and ethical guidelines. The commercialisation pathway

may include the filing of patent applications, the identification of possible licensees, and the formation of a limited liability company or some other vehicle to exploit the intellectual property.

### 8.3 Distribution of commercial benefits

The share of any net revenue flowing to a staff member or student who is the creator of intellectual property commercialised through UBSS will be 66.6% (two-thirds) or as agreed with the creator(s) prior to commercialisation.

If it is not practicable to distribute commercial benefits in accordance to the guideline stated above, then UBSS, after first consulting with the creator, may determine a mechanism for distributing commercial benefits by some other means, which may include, without limitation, UBSS holding commercial benefits in trust for the creator.

Where more than one originator is involved in the creation of intellectual property the creators shall decide how their share of annual net revenue is to be divided and inform the Dean of their decision. In the absence of a formal agreement, benefits will be equally shared between the inventors.

The revenue sharing as outlined above shall not be available to researchers who are contractually obliged to create UBSS intellectual property. Any payments to researchers in this category, other than payments governed by their engagement contracts, shall be the subject of ad hoc determination by the Dean and the appropriate Dean at the time of receipt of income.

### 8.4 Students

Student creators of intellectual property will be treated equivalently to staff members in determining their share of benefits flowing from the commercialisation of intellectual property.

In determining the share of the commercial benefit, UBSS will take the following into account:

- the degree of intellectual input from the advisor, other UBSS staff and third-parties;
- the nature and extent of any UBSS or third-party intellectual property accessed or used by the student; and
- the nature and extent of any use a student makes of UBSS facilities.

#### 8.4.1 Taxation obligations

Taxation obligations associated with commercial benefits flowing to creators of intellectual property are the responsibility of the individuals involved.

### 8.5 Agreement with third parties

UBSS may enter an agreement with another party which provides for the control, ownership and commercialisation of intellectual property. Where ownership of the intellectual property does not rest fully with UBSS, the consent of the creator(s) is to be obtained before negotiations are commenced.

In negotiating such an agreement, UBSS shall, as far as practicable, use its best endeavours to ensure that the:

- creator(s) in question are consulted, and given the opportunity to participate in any negotiations concerning ownership, protection or commercialisation of that reported intellectual property;
- negotiations will be undertaken on a case-by-case basis, according to the relevant circumstances;
- decisions arising from those negotiations shall be binding on the creator; and
- terms of the agreement are consistent with the principles set out in this policy.

An agreement reached by UBSS with a third party might include actions such as assigning the rights of the intellectual property to the third party in return for an up-front payment or the payment of royalties.

## 8.6 Collaborative research partners

Notwithstanding the need for UBSS to ensure an equitable return on intellectual property, UBSS acknowledges that, in the context of collaborative research, flexibility in the approach intellectual property negotiation is necessary to ensure that the rights of the third-party collaborator are respected.

## 8.7 Assistance of UBSS

Creators of intellectual property being commercialised by UBSS are required to provide UBSS with all reasonable assistance in the commercialisation of the intellectual property including the provision of information promptly, attending meetings and executing appropriate documents, as required.

## 8.8 Commercialisation of specifically commissioned works

The procedures outlined in Section 8 of this policy (refer 8. Exploitation of Intellectual Property Owned by UBSS) do not apply to specifically commissioned works. For such works, a contract will be developed prior to the work being commenced, and a copy of the contract will be maintained on UBSS's contract register held by the Financial Controller.

## 8.9 Restrictions on commercialisation

UBSS reserves the right and under the policy, asserts that right to prohibit the commercialisation by creators of intellectual property which, in the reasonable judgement of UBSS, is incompatible with the best interests of UBSS.

# 9 Dispute Resolution

UBSS wishes to resolve disputes arising with respect to matters covered by this policy quickly but fairly and, wherever possible, to do so without resort to litigation or other public dispute resolution procedures. The intent is to reduce the strains that such disputes and their resolution place on the parties so as to affect the work and relationship of those involved as little as possible.

If a creator has any concerns in relation to the contents or operation of this policy, then that person may notify any other originators, and the Dean about the dispute in writing. The written document(s) is to specify the full details of the dispute.

The Dean will make themselves available to meet as soon as possible in an effort to resolve the matters in dispute. A written report of the resolution agreement will be held by the Dean.

If no agreement is reached at the meeting or it is not held within 14 days of either party giving/receiving notice of the dispute and requesting a meeting, then that dispute will be referred to the Dean giving full details of the dispute and any attempts to resolve it.

If no agreement is reached, then the Dean will appoint a mediator who can assist the parties in resolving their dispute.

If such a dispute cannot be resolved through the assistance of a mediator, the Dean is to appoint an arbitrator to investigate and adjudicate the matters in dispute.

The arbitrator is to adopt procedures that ensure that each party is given a fair hearing within a period of one/three months.

Should a student or staff member consider that just and fair procedures have not been followed they may seek redress through the President.

In selecting a mediator or arbitrator, the Dean shall choose a person who is acceptable to all parties. If the parties cannot agree within 30 days, the President is to appoint the mediator or arbitrator.

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 Dean.

The President shall commence a review of a decision of the Dean within 14 days of receiving a request and complete the review as soon as practicable thereafter. After providing the originator with an opportunity to be heard, the President is required to either confirm or vary the decision or action of the Dean and to notify the originator within 14 days of its decision.

## 10 Acknowledgement of Sources

Adapted from the intellectual property policies of the University of Wollongong, Western Sydney University, Avondale College of Higher Education, University of Newcastle, the University of New South Wales, Universities Australia - Ownership of Intellectual Property in Universities Policy and Good Practice Guide (2002); Code of Conduct for the Responsible Practice of Research; the National Health and Medical Research Council (NHMRC), and the Interim Guidelines: Intellectual property Management for Health and Medical Research (2001), and the IP Australia website ([www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)).

## 11 Document Change Control

Version	Change Description	Date	Author
v1	New Policy	03.04.18	Prof Ian Bofinger

Version	Change Description	Date	Author
V2	Refreshed and new review date embedded	August 2019	Prof Ian Bofinger
V3	Removal of Executive Dean and new review date	March 2021	Anurag Kanwar