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# Intellectual Property Policy

## Research Policy

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### 1 Purpose

A defining characteristic of universities is that they undertake research, defined as including both investigative and creative activities. The output of research is intellectual property (IP) which manifests itself in such ways as new (or substantially improved) knowledge, products, services, materials, processes, designs, and artistic works.

The purpose of this policy is to address issues related to IP ownership, benefit sharing and management, and in so doing assist the development of a strong research culture at the University and encourage a greater focus on and awareness of IP.

A necessary element for the creation and dissemination of knowledge is the free exchange of ideas, information, and scholarship. The University, staff and students, have a shared interest in developing and maintaining a positive atmosphere for creative endeavours. Under New Zealand law, employers are the first owner of the IP created by employees during their normal course of employment. In general undergraduate students and research students own the IP originally created exclusively by them in the course of their studies. In certain circumstances, however, undergraduate students and research students will be required to enter into an agreement assigning or apportioning IP to the University. The laws of New Zealand grant the University, its staff, and students certain rights with respect to ownership of IP; however, this policy acknowledges the need for the University, staff and students, to work in partnership in order to maximise creative output and the benefits derived from that creativity.

This policy distinguishes between ownership of, and the benefits derived from, IP. Explicit provision is made for benefit sharing between the creators of IP and the University, even when ownership is not similarly shared.

### 2 Organisational Scope

This is a University-wide policy.

### 3 Definitions

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

Agreement:	A document that assigns (in total or in part) IP rights in accordance with this policy.
Commercial:	Commercial (and its various derivatives) refers to IP that is applicable in a business context and which is capable of yielding financial returns.
Commissioned Work:	Work that the University has specifically requested to be done on its behalf and for which it asserts IP ownership rights.

Copyright:	All copyright under the <a href="#">Copyright Act 1994</a> and all rights in the nature of copyright that may exist anywhere in the world in any original literary, artistic, dramatic, musical or other work.
Creator(s):	Any member of staff, research student or undergraduate student who creates IP in pursuit of his or her employment or course of study with the University.
Intellectual Property (IP):	The outcomes of intellectual activity and creative effort for which various rights and protections may be conferred by statute, contract or common law. It includes any invention, discovery, or creation, which may be protected by way of trademark, patent, design, copyright, know-how, trade secret, permit, and plant variety right (whether registrable or unregistrable) and all applications, drafts and workings relating to these rights.
Joint and Several Ownership:	The creator(s) and the University share ownership of IP in common, and each can use or otherwise exploit the IP independently and without reference to the other party but without detracting from the rights of the other party.
Joint Ownership:	The creator(s) and the University share ownership of IP but without the right to use and otherwise exploit it independently of each other. Before either party can use the IP it must first inform the other party of its intentions and obtain that party's approval to proceed; such approval not to be unreasonably withheld.
Net Financial Return:	Revenues received by the University after deduction of actual research and development costs, intellectual property protection, maintenance, policing, defence and enforcement costs, and product development, manufacturing and sales costs directly incurred by the University (if any).
Normal Course of Employment:	The areas of activity and associated outputs for which staff have been employed and which are described in any contract, agreement, position description, position title, directive or other pertinent document related to the employment relationship.
Relative Contribution:	The inputs of the various creators involved in the development of the IP, taking into account both the quantitative and qualitative dimensions of the inputs and including pre-existing IP that may have been contributed as well as participation in the IP development programme.
Research Students:	Persons enrolled in a supervised research course including Honours, Masters and PhD research.
Staff:	Full and part-time employees of the University.
Third Parties:	Parties external to the University with whom there is a relationship separate to the relationship existing between the University, and its staff, research students and undergraduate students.
Undergraduate Students:	Persons enrolled in a course of study offered by or on behalf of the University, or a person who is currently studying at the University under an exchange agreement with another institution, but in each case not including research students.

University:	Victoria University of Wellington.
Visiting Academics:	Academic visitors who are not employees of Victoria University but with whom the University has a third party relationship. Such visitors include those on sabbatical and other forms of research and study leave.

## 4 Policy

### 4.1 *Ownership of Intellectual Property*

Under this policy IP may be variously owned by staff, undergraduate students, research students, the University, third parties, Maori, and visiting academics.

#### 4.1.1 Staff Ownership

- (a) Staff own IP created outside the normal course of employment.
- (b) In addition, each academic staff member owns copyright in any original scholarly work that is of a literary, dramatic, musical or artistic nature produced by that academic staff member, including all lecture notes, research materials, software (except for that which has been identified as having commercial potential as provided under 4.1.5 (a)(iii) of this policy) and the drafts or published results of research, but shall not extend to materials produced for the administrative work of the University or examination and assessment materials, teaching materials published by the University, commissioned works under 4.1.4(d), contract works under 4.1.4(e), or works in relation to which Māori ownership applies under 4.1.8.

#### 4.1.2 Undergraduate Student Ownership

- (a) Undergraduate students generally own the copyright in works produced by them in the course of their studies as well as other IP created by them in the course of their studies.
- (b) In some circumstances the University may require undergraduate students to sign an agreement prior to commencing or during their intended course of study assigning IP to the University. The criteria for determining whether or not an agreement with a student is required are set out in clause 4.3.2(d) of this policy.
- (c) Notwithstanding the ownership rights provided under 4.1.2(a) and 4.1.2(b), undergraduate students on external placements with third parties may be required to sign an agreement with those third parties which determines the ownership of any IP created during the placement. In circumstances where the University has received ownership rights under 4.1.2(b) it, rather than the student, may need to enter into an agreement with the third party.
- (d) In the case of either 4.1.2(b) or 4.1.2(c), the University will institute procedures to explain the content and effect of any such agreement, and will advise undergraduate students to obtain independent advice (such as, for example, from Victoria University of Wellington Students' Association) before signing an agreement. While variations may be negotiated, any agreement to transfer IP rights to the University will be based on the template attached as Appendix B.

#### 4.1.3 Research Student Ownership

- (a) Research students generally own the copyright in works produced by them in the course of their studies such as their thesis, dissertation or report document as well as other IP created by them in the course of their studies.

- (b) In some circumstances the University may require research students to sign an agreement prior to commencing or during their intended research programme assigning IP to the University. The criteria for determining whether or not an agreement with a student is required are set out in clause 4.3.2(d).
- (c) Notwithstanding the ownership rights provided under 4.1.3(a) and 4.1.3(b) research students on external placements with third parties may be required to sign an agreement with those third parties which determines the ownership of any IP created during the placement. In circumstances where the University has received ownership rights under 4.1.3(b) it, rather than the student, may need to enter into an agreement with the third party.
- (d) In the case of either 4.1.3(b) or 4.1.3(c), the University will institute procedures to explain the content and effect of any such agreement, and will advise research students to obtain independent advice (such as, for example, from Victoria University of Wellington Students' Association) before signing an agreement. While variations may be negotiated by research students, any agreement to transfer IP rights to the University will be based on the template attached as Appendix B.

#### 4.1.4 University Ownership

The University owns all IP produced:

- (a) By staff in the normal course of employment but excluding copyright identified under 4.1.1(b) and subject to the provisions of 4.1.5(a).
- (b) As part of an undergraduate course of study to the extent covered by an agreement.
- (c) As part of supervised research to the extent covered by an agreement.
- (d) As a commissioned work by the University from staff as part of their employment duties under 4.1.6.
- (e) As contracted work by the University from third parties (some exceptions may exist on a case-by-case basis) under 4.1.7 and 4.1.9.

#### 4.1.5 Notifications

- (a) All IP other than that identified under 4.1.1(a) and for which the:
  - (i) creator reasonably believes that the IP will be of commercial interest or value to the University; or
  - (ii) creator undertook the development of IP commissioned by the University
  - (iii) IP is software that has been specifically identified as restricted under 4.1.5(a)(i) or 4.1.5(a) (ii) and is therefore not for open source distribution.must be notified by the creators to the University in the manner described in 4.1.5(b) as soon as that IP has been identified by or drawn to the attention of the creators (if the Creator is unsure, he or she must assume the IP will be of commercial interest);
- (b) Notification entails completing a notification form (Appendix A) and submitting it to the IP Committee of Victoria Link Ltd.

*IP Committee*

*Viclink Ltd*

*PO Box 1762*

*Wellington*

[info@vic-link.co.nz](mailto:info@vic-link.co.nz).

- (c) The University may then:
  - (i) Claim ownership of the Intellectual Property;
  - (ii) License the IP to the creators; or
  - (iii) Decide to share the IP under Joint and Several Ownership with the creator(s);
  - (iv) Decide to share the IP under Joint Ownership;
  - (v) Decline ownership of the IP, in which case the ownership may be assigned to the creator(s) under 4.1.5(e).
- (d) The University, through Victoria Link Ltd., must use its best efforts to respond formally to notifications within 60 working days. When a response is requested in less than (within) 60 working days the Committee will use its best endeavours to respond within this shorter time.
- (e) If the University does not wish to commercialise notified IP that is owned by the University (through employment, student, visitor or other agreement) by declining ownership under 4.1.5(c)(v), it will notify the creator(s) and the creator(s) may request that that IP be assigned to him, her or them. That assignment will then be negotiated with Victoria Link Ltd. in good faith.
- (f) Victoria Link Ltd. will support the notification process by receiving the completed notification form (Appendix A, Intellectual Property Notification Form) and forwarding this to the IP Committee for consideration, providing advice on aspects of the policy, and maintaining an IP Register.
- (g) Creators must keep confidential all IP that is notified (or should be notified) to the University under this policy. Without limitation, this means they must not submit or publish any academic abstracts or other publications, make any conference presentations, release press articles or otherwise disclose or use such IP without the written approval of the University. Such use or disclosure may prejudice the patentability and commercial potential of that IP.

#### 4.1.6 Commissioned work

IP that is explicitly commissioned by the University from staff as part of their employment duties is owned by the University. The creator and the University will enter an agreement at the time the work is commissioned. Where work is commissioned by the University outside of an employment relationship, then an explicit contract shall specify ownership of any resulting IP.

#### 4.1.7 Third Party Ownership

The terms and conditions specified in contracts with third parties may determine the ownership of IP, the distribution of income, confidentiality requirements and the like. Such contracts may be for services supplied or received, and may apply to students or the University (refer to the [Management of External Research, Consultancy and Related Contracts Policy](#)).

#### 4.1.8 Ownership of Mātauranga Māori

- (a) Any intellectual property based wholly or partly on existing mātauranga and taonga Māori, should first be assessed by Toihuarewa which will advise the university on the extent of Māori ownership that is justified.
- (b) Toihuarewa's assessment of Māori ownership entitlement will be based on the degree to which existing mātauranga and taonga Māori contributed to the development of the IP. Mātauranga and taonga Māori inputs will have been identified as part of the ethics approvals process when the research project leading to the IP was established.

- (c) For an understanding of mātauranga and taonga Māori the university's management of this policy will be informed by the various deliberations (including published papers) of such organisations as Archives New Zealand and The Ministry of Research Science and Technology.
- (d) Toihuarewa's assessment of IP ownership will include advice on any subsequent benefit-sharing agreements.

#### **4.1.9 Visiting Academic Ownership**

Heads of Schools, Directors of Centres and Institutes, and Managers of other administrative units will negotiate an agreement with visiting academics conducting research at Victoria, and for Victoria academics conducting research at other institutions. The principle of such agreements should be that IP is owned by the parties in proportion to the relative value of each party's contribution to the development of the IP including consideration of pre-existing intellectual property contributed, the quantum of inputs contributed, and the value or importance of that intellectual property and those inputs to the development of any new intellectual property.

#### **4.1.10 Treaty of Waitangi**

This policy will be reviewed following the decision of the WAI262 claim, the Treaty claim relating to indigenous flora and fauna.

### **4.2 Benefit Sharing**

- (a) Benefits derived from commercialisation of the IP owned by the University or Victoria Link Limited shall be equitably shared between the creator(s) and the University. In general, the net financial return received by the University or Victoria Link Limited from commercialisation and that is directly attributable to the IP developed by the creator(s), shall be shared on the basis of:
  - (i) One third to the creator(s). In the case of more than one creator in proportion to their relative contributions.
  - (ii) One third to the University's School(s)/Centre(s)/Institute(s). In the case of more than one School(s)/Centre(s)/Institute(s) in proportion to their relative contributions.
  - (iii) One third to the central University.
- (b) If circumstances suggest that a different distribution of benefits would be more equitable, any of the benefiting parties may initiate negotiations for alternative benefit sharing arrangements. Such circumstances would normally relate to the relative size and value or importance of the contributions of the creator(s), School/Centre/Institute, and the University.
- (c) The calculation of the net financial return shall be available to the benefiting parties described in 4.2(a) for their scrutiny.

### **4.3 Management**

#### **4.3.1 Non-disclosure**

To ensure the protection of IP under clause 4.1.5 and to safeguard the interests of the creator(s) and the University; the creator(s) and the University will undertake not to disclose the details of unprotected IP to a third party unless a formal confidentiality agreement protecting that disclosure exists between the relevant parties.

#### 4.3.2 Agreements

- (a) Heads of Schools, Directors of Centres and Institutes, and Managers of other administrative units in which students may pursue courses of study will, in consultation with affected staff, make a determination as to whether an agreement should be sought with prospective students, and the form of such an agreement.
- (b) If the determination specified in 4.3.2(a) is that an agreement should be implemented then the Head of School, Director or Manager will negotiate an appropriate agreement with the student(s).
- (c) Where an agreement is required as a result of 4.3.2(a), lack of such an agreement may mean that the student cannot pursue a particular course of study or work on a particular research project, or undertake a particular placement. Should such a circumstance arise, alternative courses of study, research projects, or placements will be explored to allow students to complete their studies.
- (d) In determining the requirement for an agreement under 4.3.2(a) the following criteria will be applied:
  - (i) placement with an external organisation is involved;
  - (ii) the likelihood that IP which must be notified under this policy will be created;
  - (iii) the extent to which pre-existing IP may be used in the creation of new IP;
  - (iv) the extent to which University resources may contribute to the creation of new IP;
  - (v) the extent to which research is part of a larger research programme;
  - (vi) the contribution of supervisors to the development of new IP in the course of research;
  - (vii) existing IP agreements with third parties.

#### 4.3.3 Rights of Creators

- (a) The University must take reasonable steps to respect the right of the creator to be acknowledged as the creator of IP and to ensure that others respect that right.
- (b) Where the University uses IP it must take reasonable steps to obtain the permission of the creator before modifying or adapting that IP for uses distinctly different from the original.
- (c) Where the creator wishes not to be acknowledged as the creator of IP that has been modified or adapted, the University must take reasonable steps to respect that wish and to ensure that others respect it.

#### 4.3.4 Disputes

In the case of a dispute arising between the University and the creator(s) involving the ownership, benefit sharing, or management of the IP, or any other matter arising out of this policy the parties agree to refer the matter to the Intellectual Property Standing Committee and to engage in full and frank discussions in an attempt to resolve the issue including if helpful mediation. Failing the satisfactory resolution of the dispute by this means an arbitrator will be appointed by the President of the Arbitrator's Institute. Such arbitration shall be final and binding.

#### 4.3.5 Policy Management

An Intellectual Property Standing Committee (IPSC) of the University Research Committee will be responsible for oversight and moderating this policy. Appendix C outlines the responsibility of the IPSC.

### 5 Legislative Compliance

The University is required to manage its policy documentation within a legislative framework. The legislation directing this policy is the:

[Copyright Act 1994](#)

[Patents Act 1953](#)

[Trade Marks Act 2002](#)

[Designs Act 1953](#)

[Layout Designs Act 1994](#)

[Plant Variety Rights Act 1987](#)

### 6 References

[Management of External Research, Consultancy and Related Contracts Policy](#)

Previous Version: [archived IntellectualPropertyPolicy\\_20090525.pdf](#)

### 7 Appendices

Appendix A: [Intellectual Property Notification Form](#)

Appendix B: [Template for Agreement to Assign Intellectual Property](#)

Appendix C: [Intellectual Property Standing Committee](#)

### 8 Approval Agency

Vice-Chancellor

### 9 Approval Dates

This policy was originally approved on: 8 June 2005

This version was approved on: 26 May 2009

This version takes effect from: 26 May 2009

This policy will be reviewed by: 26 May 2012

### 10 Policy Sponsor

Deputy Vice-Chancellor (Research)

### 11 Contact Person

The following person may be approached on a routine basis in relation to this policy:

Ian McIntosh

Manager, Research Commercial and Intellectual Property

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