**Intellectual Property Guidelines **

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# PURPOSE

Unitec’s Intellectual Property Policy (**Policy**) recognises that intellectual property (**IP**) developed by Unitec Staff Members or Students (collectively or individually) is owned by the Originator, unless that work is specifically commissioned by Unitec or a third party (in which case the Commissioning Party owns the IP).

Where IP is owned by the Staff Member or Student:

1. Unitec shall retain a royalty-free, irrevocable, non-exclusive, perpetual right to use, for research and teaching purposes, all research outputs and teaching materials developed in the course of a Staff Member fulfilling his or her obligations of employment at Unitec; and
2. the Originator is entitled to exploit the IP either independently or in association with Unitec.

The purpose of these Guidelines is to provide guidance in the event that staff or students wish to protect, manage and/or commercialise their IP and Indigenous Knowledge (Mātauranga Māori). This document is a supporting document to the [Intellectual](http://docushare.unitec.ac.nz/dsweb/Get/Document-186/Intellectual%20Property%20Policy_v.6%20July09.pdf) [Property Policy](http://docushare.unitec.ac.nz/dsweb/Get/Document-186/Intellectual%20Property%20Policy_v.6%20July09.pdf); capitalized terms used in these Guidelines have the same meanings given to them in the Policy.

**PLEASE NOTE THAT:**

1. **staff and students should ensure that all matters associated with IP are kept confidential - external disclosure of unprotected IP, including through publication, may substantially lessen the potential value of the IP; and**
2. **any discussions with external parties (including other academics) should only take place after a confidentiality agreement has been put in place.**

# GUIDELINES: IP POLICY

If requested, Tūāpapa Rangahau will offer guidance to staff and students on the process for protecting, managing and/or commercialising their IP. The [Research Partner Enterprise](https://www.unitec.ac.nz/about-us/contact-us/staff-directory/gregor-steinhorn) is Unitec’s Designated Intellectual Property Advisor and can assist staff and students who believe they are creating new IP. Staff and students are encouraged to seek advice about the process for commercialisation from Tūapapa Rangahau, with no obligation.

# IP Ownership

It is the Originator’s responsibility to ensure there are no competing claims on the ownership of the IP. The Originator must ensure they have accurately recorded the IP development process and timeline. They should maintain accurate records of the context in which the research was carried out, what research has taken place, who was involved and when it occurred. Accurate documentation of the development process will assist the Originator in protecting himself or herself from any potential challenge to the ownership of the IP.

All contributors to scholarly works should be recognised in accordance with the conventions of the relevant discipline(s) involved and Unitec’s Conduct of Research Policy. Where more than one Originator has been involved in the creation of IP, the Originators must decide among themselves how ownership of that IP should be apportioned. All members of the research team must ensure that appropriate credit is given for work done by all contributors.

Staff and students who wish to develop IP in their private capacity (**Private IP**) must do so in their own time, utilising their own facilities and equipment, unless otherwise negotiated with Unitec. They will also be responsible for any costs involved in the Commercialisation process.

# Recognising Contributions by Unitec

In reporting or disseminating the work (not being Private IP), staff members and students should acknowledge Unitec as being the place in which the work was done and Originators should, where appropriate, acknowledge Unitec’s direct or indirect support (which might take the form of staff time, computing infrastructure resources, library resources, or other resources).

# Collaborative Relationships

* + 1. **External Researchers/Agencies**

Unitec is one of very few institutions in Australasia to grant ownership of IP to the Originator. Where collaboration occurs with external researchers/agencies, conflicts may arise in the distribution of IP ownership. Staff should involve Tūapapa Rangahau and collaboratively negotiate how the rights to IP arising out of the collaboration are to be allocated, or the process that will be applied to determine the allocation.

* + 1. **Staff/Students**

Unitec acknowledges that IP created by a student in pursuit of his/her studies is generally owned by that student. In instances where staff and students are co-creating work of any kind, including academic, creative or technical, and these works will be disseminated (e.g. published, performed, screened, patented, commercialised or entered into a competition), it is expected that the staff member(s) will initiate a written agreement with the student/s to acknowledge the contributions and ownership of the IP therein. Best endeavours should be applied to work with the student and reach a final signed agreement with them. The agreement will not contravene the rights of the student as acknowledged in the IP Policy. Any modification or waiver of rights by a student requires informed consent. Staff must take care to ensure students understand their rights. The Intellectual Property Advisor will be able to assist with matters but students should, in all circumstances, be advised that Unitec is not in a position to give definitive advice on IP matters and students should obtain independent legal advice.

# Intellectual Property Disclosure

Unitec staff members who have developed IP and intend to pursue commercialisation must inform the Intellectual Property Advisor, in advance, using the relevant Disclosure Form (Appendix A/B). The nature of the IP and the intention(s) of the researcher(s) for it should be outlined. Disclosure ensures Unitec is aware of the activity and can respond to enquiries from external sources. It also allows the staff member to negotiate protection of the IP, for example managing staff and student access to, or publication of, commercially sensitive materials.

Unitec retains the right to investigate claims to IP before agreeing that staff own these to ensure the legitimacy of the claim and as a protection for the interests of all parties who have an interest in the IP. For staff members seeking Unitec’s support in potential commercialisation, the completed Disclosure Form will establish the formal disclosure date. It will also provide Tūapapa Rangahau with preliminary information required to evaluate the IP and will enable a detailed discussion with the staff involved.

As noted in section 1 above, Staff should ensure that all matters associated with IP are kept confidential, as external disclosure while it is unprotected, including through publication, may substantially lessen the potential value of the IP.

# Preliminary Evaluation

## Course of Action if Seeking Partnership with Unitec

In response to a staff member or student’s request for partnership in IP development and commercialization, the Dean - Research and Enterprise will, in his/her discretion, determine which of the following options is the most appropriate in the circumstances:

* + - 1. agree for Unitec to be involved, with Unitec involvement led by Tūapapa Rangahau (on the basis of alignment with Unitec’s Research and Enterprise Strategy 2015-2020 or any subsequent strategy adopted); or
      2. decline Unitec involvement.

The Originator will be advised in writing of the outcome of the initial evaluation.

## Outcome of Preliminary Evaluation

1. If option 1, as set out in section 3.1.1(a) above, is the applicable option, a plan of action will be developed between the Originator and Tūapapa Rangahau.
2. If option 2, as set out in section 3.1.1(b) above, is the applicable option, the Originator will be informed in writing and will be free to pursue options independently of Unitec. If the Originator chooses to pursue commercialisation external to Unitec, an Acknowledgement Form (Appendix B) will be required.

# Dissemination

While researchers have an obligation to disseminate their research and ensure that the outcomes of their research reach a wide audience, any contractual obligations, commercial sensitivities and potential security issues must first be taken into account. The responsibility for ensuring that work is published or publicly disseminated in some manner is shared by all material contributors to the work and all authors must examine and accept responsibility for the contents of the publication

## Use of Works by Unitec staff

## Unitec has a right to use research and teaching materials that were developed in the course of a staff member fulfilling their obligations of employment, however the following caveats do apply:

## If the Originator has submitted a Disclosure Form seeking to pursue commercialisation, work utilising their IP should not be externally distributed without the express written consent of the originator(s).

## “Use” does not permit a Unitec staff member to take scholarly work and use it to perform consultative or contract work without the express written consent of the originator(s).

## A conflict of interest should be signaled where an author designates work as a required course text.

## Works can only be sold at a reasonable and justifiable price.

## Where potential exists for commercialisation of materials, Unitec will approach the Originator to enter into an agreement regarding the use of the material and, where the staff member has left Unitec, Unitec will endeavor to communicate with them regarding the commercialisation of their work.

## Licensing – Creative Commons

The Originator has a choice of license for their work when disseminating it. In the Scholarly Communication Guidelines 4.3(10) staff are encouraged to apply a Creative Commons License to their work. The Creative Commons provide free licenses and tools that copyright owners can use to allow others to share, reuse and remix their material, within a legal framework. The licenses provide everyone from individual originators to large companies and institutions a simple, standard within which to grant copyright permissions to their creative work resulting in a vast and growing digital commons (Creative Commons, 2013). There is a choice of six licenses that vary in the allowable use of the work the license is applicable to. See the website [www.creativecommons.org.nz](http://www.creativecommons.org.nz) for more details. The Research Partner, Enterprise can provide assistance if required.

Members of Unitec who use the copyrighted works of others are cautioned that the grant of license to use such works does not include a waiver of “moral rights” of the original author(s). According to the [Copyright Act 1994, section 98](http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM346250.html), author(s) have the right to object to “derogatory treatment of the work” – derogatory treatment is described as (a) the term treatment of a work means any addition to, deletion from, alteration to, or adaptation of the work other than a translation of a literary or dramatic work or an arrangement or transcription of a musical work involving no more than a change of key or register and (b) the treatment of a work is derogatory if, whether by distortion or mutilation of the work or otherwise, the treatment is prejudicial to the honour or reputation of the author or director.

## Output Types

Output types are defined in the Guidelines for Documenting Research Outputs Evidence Guide. This includes creative outputs.

# External Support

There are a number of very good external resources available to tertiary institutions. Particular examples include KiwiNet and Return on Science, who exist to help commercialise research, provide free initial assessments and advice, as well as the opportunity for funding, other tertiary institutions, who can be commercialisation partners, or entrepreneurs, who want to find great ideas and provide funding. In terms of advice, there are also lawyers, such as AJ Park, who offer free initial consultations.

# GUIDELINES FOR OWNERSHIP OF INDIGENOUS KNOWLEDGE

# Terms of Ownership

In accordance with 3.1.3 (1) Indigenous Knowledge, Unitec acknowledges that Indigenous People are the guardians of their cultural knowledge and have the right to protect and control dissemination of that knowledge. Therefore, the researcher is required to agree in writing, with the appropriate groups, the terms of ownership and form of acknowledgment and protection.

In accordance with 3.1.3 (2) Indigenous Knowledge of the Policy, the researcher may never be the ‘owner’ of cultural knowledge, but will act in the role of protector. They may act according to the agreed rules of copyright, access and use. The Research Partner, Rangahau Māori, can advise if required.

# Consultation

In matters pertaining to Indigenous Knowledge, all researchers have a responsibility to consult appropriately.

As per the Unitec Human Research Ethics Guidelines, researchers should consult with the Māori members of UREC if issues of intellectual and cultural property ownership of Māori are likely to arise in the context of their research.

As per the Unitec Human Research Ethics Guidelines, the Centre for Pacific Development and Support is available to provide support, which includes academic assistance.

For more information about social and cultural responsiveness, please see the Guidelines for Researchers Regarding Māori Social and Cultural Responsiveness.

# RELEVANT DOCUMENTS

[Educatio](http://www.legislation.govt.nz/act/public/1989/0080/latest/DLM175959.html)n Act 1989

[Copyright Act 1994](http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM345634.html?search=qs_act%40bill%40regulation%40deemedreg_copyright+act+_resel_25_h&p=1&sr=1)

[Copyright (New Technologies) Amendment Act 2008](http://www.legislation.govt.nz/act/public/2008/0027/latest/DLM1122502.html?search=ts_act%40bill%40regulation%40deemedreg_copyright+(infringing+file+sharing)_resel_25_a&p=1)

[Conduct of Research Policy](https://thenest.unitec.ac.nz/TheNestWP/wp-content/uploads/2018/09/AC-4.0-Conduct-of-Research-Policy-20180731.pdf)

[Intellectual Property Policy](http://docushare.unitec.ac.nz/dsweb/Get/Document-186/Intellectual%20Property%20Policy_v.6%20July09.pdf)

[Unitec Human Research Ethics Guidelines](http://thenest.unitec.ac.nz/fms/Resource%20Toolbox/Guidelines/Academic%20Guidelines/Staff%20Research/Human%20Research%20Ethics%20Guidelines.pdf)

[Te Noho Kotahitanga](http://thenest.unitec.ac.nz/unitecintranet/our-unitec/te-noho-kotahitanga/en/te-noho-kotahitanga.cfm)

[Documenting Research Outputs Guidelines](http://thenest.unitec.ac.nz/fms/Resource%20Toolbox/Guidelines/Academic%20Guidelines/Staff%20Research/Guidelines%20for%20Documenting%20Research%20Outputs.pdf)

[Scholarly Communication Guidelines](http://thenest.unitec.ac.nz/fms/Resource%20Toolbox/Guidelines/Academic%20Guidelines/Staff%20Research/Guidelines%20on%20Scholarly%20Communication_v1_8%20April%202014%20Final.pdf)

[Guidelines for Researchers Regarding Māori Social and Cultural Responsiveness](http://thenest.unitec.ac.nz/fms/Resource%20Toolbox/Guidelines/Academic%20Guidelines/Staff%20Research/Guidelines%20for%20Researchers%20Regarding%20Maori%20Social%20and%20Cultural%20Responsiveness.pdf)

# APPENDIX A INTELLECTUAL PROPERTY DISCLOSURE FORM - Seeking Support

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|  | **INITIAL INTELLECTUAL PROPERTY DISCLOSURE FORM – Seeking Support** |

*This form advises Unitec of an Originator’s intention to pursue commercialisation of Intellectual Property (IP) and seeks to negotiate a partnership with Unitec. This form is to be read in conjunction with the Intellectual Property Policy and Guidelines documents – see specifically section 4.1 Intellectual Property Policy.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Project Summary** | | | | |
| **Title** |  | | | |
| **Originator’s Name** |  | | | |
| **Programme or Pathway** |  | | | |
| **Contact Details** | **Email:** |  | **Phone:** |  |
| **Other Contributing Originators** |  | | | |
| **Date of Disclosure** |  | | | |
| **Date of Discovery** |  | | | |

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| **IP Description** |
| **Description: *Provide a general description of your IP.*** |
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| **Development Status** |
| **Current Status: *Outline the current status of the project, including comments on research / experimental results to date, any problems/barriers encountered, and degree of recorded data in laboratory notebooks.*** |
|  |
| **Future Plans: *Describe the developments or verifications needed to prove your IP works and is marketable.*** |
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| **Market Assessment** |
| **Market Need: *Describe the market problem or need your IP is intended to resolve.*** |
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| **Applications: *Describe potential applications and markets for your IP.*** |
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| **End Users: *Provide a summary of the end user groups or companies you envisage using your IP.*** |
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| --- | --- | --- | --- | --- |
| **Commercial Tests** | | | | |
| **Have you completed any patent searches to date?** | **Yes** | | **No** | |
| *If yes, please provide details of search strings and results.* | | | | |
| **Have you completed any searches of the published literature?** | **Yes** | | **No** | |
| *If yes, please provide any relevant references.* | | | | |
| **Are you aware of any similar technologies or relevant prior art in the proposed space?** | **Yes** | | **No** | |
| *If yes, please provide details of relevant technologies and comment on key similarities and differences compared to your IP.* | | | | |
| **Are you aware of any companies that are operating in the proposed space?** | | **Yes** | | **No** |
| *If yes, please provide details of relevant manufacturers, distributors or potential end user groups.* | | | | |

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| --- | --- | --- | --- |
| **Diligence** | | | |
| **Has the IP been published or publically disclosed outside of this organisation?** | **Yes** | | **No** |
| *If yes, please provide details and append copies of publications.* | | | |
| **Are there any confidentiality agreements / non-disclosure agreements in place around this IP? Does the Originator request non-disclosure on part of Unitec?** | **Yes** | | **No** |
| *If yes, please provide details on third parties involved.* | | | |
| **Have there been other organisations involved in the development or funding of this project?** | **Yes** | | **No** |
| *If yes, please provide details.* | | | |
| **Has this project used anyone else’s knowledge, products, processes or protected intellectual property? Please note that Indigenous Knowledge is considered as “owned” by that Indigenous group from which it originated, you are expected to consult appropriately as outlined in the Intellectual Property Guidelines.** | | **Yes** | **No** |
| *If yes, please provide details.* | | | |
| **Are there any external contributing Originators?** | | **Yes** | **No** |
| *If yes, please provide details.* | | | |
| **Are there any other parties that could claim ownership of this IP?** | | **Yes** | **No** |
| *If yes, please provide details.* | | | |

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| --- |
| **Partnership with Unitec** |
| **Please outline how you think this partnership would work/what would you like support with?** |
|  |

# APPENDIX B INTELLECTUAL PROPERTY DISCLOSURE FORM – Independent

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|  | **INITIAL INTELLECTUAL PROPERTY DISCLOSURE FORM - Independent** |

*This form advises Unitec of an Originator’s intention to pursue commercialisation of Intellectual Property (IP) independently from Unitec – meaning they are not seeking Unitec’s time, resources or financial support. This form is to be read in conjunction with the Intellectual Property Policy and Guidelines documents – see specifically section 4.1 Intellectual Property Policy.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Project Summary** | | | | |
| **Title** |  | | | |
| **Originator’s Name** |  | | | |
| **Programme or Pathway** |  | | | |
| **Contact Details** | **Email:** |  | **Phone:** |  |
| **Other Contributing Originators** |  | | | |
| **Date of Disclosure** |  | | | |
| **Date of Discovery** |  | | | |

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| --- |
| **IP Description** |
| **Description: *Provide a general description of your IP.*** |
|  |

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| **Development Status** |
| **Current Status: *Outline the current status of the project, including comments on research / experimental results to date, any problems/barriers encountered, and degree of recorded data in laboratory notebooks.*** |
|  |
| **Future Plans: *Describe the developments or verifications needed to prove your IP works and is marketable.*** |
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| --- | --- | --- | --- |
| **Diligence** | | | |
| **Has the IP been published or publically disclosed outside of this organisation?** | **Yes** | | **No** |
| *If yes, please provide details and append copies of publications.* | | | |
| **Are there any confidentiality agreements / non-disclosure agreements in place around this IP? Does the Originator request non-disclosure on part of Unitec?** | **Yes** | | **No** |
| *If yes, please provide details on third parties involved.* | | | |
| **Have there been other organisations involved in the development or funding of this project?** | **Yes** | | **No** |
| *If yes, please provide details.* | | | |
| **Has this project used anyone else’s knowledge, products, processes or protected intellectual property? Please note that Indigenous Knowledge is considered as “owned” by that Indigenous group from which it originated, you are expected to consult appropriately as outlined in the Intellectual Property Guidelines.** | | **Yes** | **No** |
| *If yes, please provide details.* | | | |
| **Are there any external contributing Originators?** | | **Yes** | **No** |
| *If yes, please provide details.* | | | |
| **Are there any other parties that could claim ownership of this IP?** | | **Yes** | **No** |
| *If yes, please provide details.* | | | |

**Acknowledgement**

I, **[**insert full name**]** of **[**enter address**]** hereby confirm that I am pursuing commercialisation of my Intellectual Property independently of Unitec’s resources. I acknowledge that I must develop this IP in my own time, in my own facilities and at my own expense. Any use of Unitec’s resources for the purpose of commercialising my IP may be a breach of **[**my employment agreement**] [**the terms on which I am enrolled as a student**] *(****delete as appropriate****)***. Any support from Unitec must be negotiated in writing and in advance. I have been informed of my entitlement to seek assistance about commercialisation from Tūāpapa Rangahau, with no obligation, and am aware that any assistance from Tūāpapa Rangahau does not purport to be legal advice and should not be relied upon as such.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# DOCUMENT DETAILS

**AMENDMENT HISTORY**

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Issue Date | Created/Changed by | Reason for Revision |
| 1 | 28/04/2010 | Intellectual Property Officer | New document to support revised Intellectual Property Policy & Procedure |
| 2 | 02/07/2018 | Senior Grants Advisor | Revised document to support the new Intellectual Property Policy |

## Approval Details

|  |  |  |  |
| --- | --- | --- | --- |
| Version number (this version) | 2 | Issue Date (this version) | Sept 2018 |
| Version History  (Amendments made to this version) | Date of amendment/s: | Amendment/s:   * Complete rewrite | |
| Approval authority: | Executive Leadership Team | Date of Approval | 18 September 2018 |
| Policy Sponsor  (May have authority to approve minor amendments) | Executive Dean – Academic | Policy Owner: | Designated Intellectual Property Advisor (Research Office) |
| Contact Person | Marcus Williams – Dean Research and Enterprise | Date of Next Review | Sept 2021 |