



## Intellectual Property

### Table of Contents

<b>1. POLICY STATEMENT .....</b>	<b>2</b>
<b>1.1. General .....</b>	<b>2</b>
<b>1.2. Objectives .....</b>	<b>2</b>
<b>2. DEFINITIONS .....</b>	<b>3</b>
<b>3. PROCEDURE .....</b>	<b>4</b>
<b>3.1. Ownership .....</b>	<b>4</b>
<b>3.1.1. Staff .....</b>	<b>4</b>
<b>3.1.2. STUDENTS .....</b>	<b>5</b>
<b>3.1.3. Use by Non-Owners .....</b>	<b>6</b>
<b>3.2. Commercial Exploitation and Intellectual Property Protection .....</b>	<b>7</b>
<b>3.3. Distribution of Financial Returns .....</b>	<b>8</b>
<b>3.4. Agreements with Third Parties .....</b>	<b>9</b>
<b>3.5. Dispute Resolution .....</b>	<b>9</b>
<b>3.6. Information and Education .....</b>	<b>9</b>
<b>REFERENCE DOCUMENTS .....</b>	<b>10</b>
<b>DOCUMENT DETAILS .....</b>	<b>10</b>
<b>AMENDMENT HISTORY .....</b>	<b>11</b>

# 1. POLICY STATEMENT

## 1.1. General

- 1) Unitec aims to encourage an environment in which learning, teaching, scholarship, research and innovation will flourish. Unitec adheres to the principle that knowledge and ideas should be made available for the benefit of the entire community. Where this principle conflicts with commercial considerations, Unitec will seek to resolve the conflict to ensure dissemination without undue delay, having regard to the wishes of the originator.
- 2) This policy aims to:
  - i) facilitate, where appropriate, the commercialisation of intellectual property created by staff and students of Unitec. Unitec recognises that commercialisation usually requires efforts from several parties. All parties are entitled to an equitable share of any financial returns from such commercialisation;
  - ii) clarify issues in relation to the ownership of intellectual property
- 3) This policy also recognises that Unitec will be the risk leader in the commercialisation process.

## 1.2. Objectives

With respect to intellectual property, Unitec seeks to:

- 1) promote the fundamental objects and purpose of the institution in teaching, in research and in furthering knowledge, both for its own sake and for the value that its application brings to the communities that Unitec serves;
- 2) recognise the right of originators of intellectual property to participate in and influence decisions regarding the use of intellectual property (including its commercialisation) created by them;
- 3) foster corporate identity and an *esprit de corps* within the institution;
- 4) protect its integrity and welfare;
- 5) provide incentives for staff and students to develop and apply intellectual activity in the fields of industry, commerce, science, literature and the arts;
- 6) provide staff and students with fair and reasonable recognition and remuneration;
- 7) provide a resource for industry, commerce and the community;
- 8) encourage and develop institutional growth, progress and success through ventures with private and public sectors;
- 9) ensure the judicious use of public funds; and
- 10) obtain an appropriate return for facilities, resources and services provided by Unitec outside the mainstream activities of teaching and research.

Note: Unitec acknowledges the kind permission of the University of Canberra in allowing its Intellectual Property Policy to form the basis of this policy.

## 2. DEFINITIONS

For the purpose of this policy:

COPYRIGHT	means copyright as described in and vesting under the Copyright Act 1994.
INTELLECTUAL PROPERTY	<p>includes any proprietary right concerning:</p> <ol style="list-style-type: none"><li>1) Patents under the <a href="#">Patents Act 1953</a> and/or under any corresponding overseas statute or law;</li><li>2) Information that is subject to an employee's duty of fidelity to the employer;</li><li>3) Copyright vesting by virtue of the <a href="#">Copyright Act 1994</a> and/or under any corresponding overseas statute or law, in literary works (including computer programs), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances and non-copyright protection for certain performances;</li><li>4) Trade marks registered under the <a href="#">Trade Marks Act 2002</a> and/or under any corresponding overseas statute or law;</li><li>5) Unregistered trade marks used or intended for use in businesses;</li><li>6) Designs registered under the <a href="#">Designs Act 1953</a> and/or under any corresponding overseas statute or law;</li><li>7) New plant varieties under the <a href="#">Plant Variety Rights Act 1987</a> and/or under any corresponding overseas statute or law;</li><li>8) Circuit layouts (computer chips) under the <a href="#">Layout Designs Act 1994</a> and/or under any corresponding overseas statute or law;</li><li>9) Trade secrets and confidential information protected by equity or common law; and</li><li>10) All other rights resulting from intellectual activity in the industrial, commercial, scientific, literary and artistic fields.</li></ol>
INTELLECTUAL PROPERTY OFFICER	means the Chief Executive of Unitec, or a person appointed by the Chief Executive, who has responsibility for making decisions in relation to the commercial and non-commercial utilisation of intellectual property on behalf of Unitec.
INTEREST	in relation to the commercial exploitation of intellectual property includes full or partial ownership or an exclusive licence over that intellectual property.
ORIGINATOR	includes an author, creator or inventor.
PARTNERS	means people or groups collaborating with Unitec for the purposes of developing a project. Commercial and academic partners may be included. The term "partners" in this Policy is not restricted to

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	and does not necessarily require the creation of a partnership in legal terms.
SOFTWARE	means source code and/or compiled code designed for use by a computer or appliance to accomplish technical and/or business outcomes and/or operations
STAFF MEMBER	means a person who is a member of the staff of Unitec, whether full-time or part-time, unlimited or fixed term, or casual.
STUDENT	means a person who is enrolled at Unitec for the purposes of obtaining knowledge.
USE	in relation to an intellectual property rights means to do any act that would constitute an infringement of an intellectual property right if done without the licence of the owner of that right.
COMMERCIALISATION	means exploiting or making the relevant Intellectual property chiefly for profit, by organising and managing it as a commercial undertaking.

### 3. PROCEDURE

#### 3.1. Ownership

The conditions specified in section 3.1 of this policy apply also to visitors undertaking research or other work at Unitec.

##### 3.1.1. Staff

- 1) Subject to section 3.1.1 (2) and (3) of this policy, Unitec claims ownership of all intellectual property created by a staff member in the course of fulfilling his or her contract of employment with Unitec.
- 2) If Unitec considers that the commercialisation of any such intellectual property should be pursued, Unitec will negotiate with the staff member an Assignment Agreement, to record the shared ownership of the intellectual property, and a Revenue Sharing Agreement which will be equitable and based on funding, resources and other factors in accordance with the provisions of section 3.3 of this policy.
- 3) In respect of intellectual property created by a staff member in the course of fulfilling his or her contract of employment with Unitec which is not considered for commercialisation under section 3.1.1 (2) above:
  - a) If it comprises either course materials or software, Unitec agrees to grant to the originator, without charge, a royalty-free, non-exclusive and irrevocable license to use the intellectual property in those materials or software for teaching and research at Unitec subject to the specific terms of any contract between Unitec and the originator regarding the development of those course materials or software;
  - b) For all other such intellectual property Unitec agrees that the originator may retain ownership.

### 3.1.2. STUDENTS

- 1) Enrolled students of Unitec own the intellectual property created by them in pursuit of their studies except in the following circumstances, in which Unitec shall have an interest in that intellectual property:
  - a) where the student received financial support from Unitec in the form of wages, salary, stipend or grant funds for the research; or
  - b) where generation of the property has involved substantial use of institutional resources and/or services beyond that which is ordinarily provided to students; or
  - c) where generation of the property has resulted from use of pre-existing intellectual property owned by the institution; or
  - d) where the property forms part of intellectual property generated by a team of staff and students of which the student is directly or indirectly a member; or
  - e) where the property has been generated as the result of project specific funding provided by or obtained by the institution.

Where Unitec asserts or has an interest under this section of the policy, the precise details of ownership will be negotiated on a case-by-case basis in accordance with the principles expressed or implied in this policy.

- 2) Where Unitec asserts or has an interest in the commercial exploitation of intellectual property created by a student originator Unitec may seek to protect the rights of the student originator by:
  - a) offering them a fair share of commercial returns resulting from the commercial exploitation of the property, as set out in sections 3.2 and 3.3 of this policy;
  - b) according them due acknowledgment and attribution; and/or
  - c) offering an input in the development of the intellectual property.
- 3) Where Unitec asserts or has an interest in the commercial exploitation of intellectual property generated by students under section 3.1.2 of this policy, Unitec will ensure that:
  - a) the claim will not be allowed to interfere with the assessment of the student's academic performance; and
  - b) the student is treated in accordance with the provisions of this policy.
- 4) Unless otherwise agreed, Unitec will not assist a student to patent an invention or register other intellectual property created by the student unless the student is prepared to assign the patent rights or other intellectual property rights to Unitec in accordance with this policy. If a student is a member of a team responsible for an invention that can be patented, Unitec will negotiate with the student an Assignment Agreement to formalise ownership of the intellectual property as well

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as a Revenue Sharing Agreement in accordance with the provisions of section 3.3 of this policy.

- 5) Where Unitec is the owner of intellectual property created by an originator, whether a staff member, student or visitor, in the course of fulfilling a contract of employment at Unitec or otherwise, Unitec will assign its rights to the originator only if:
  - a) the Intellectual Property Officer decides that Unitec either will not become involved in or will not continue its involvement in the commercial exploitation of the intellectual property (any such decision to be notified to the originator); and
  - b) the Intellectual Property Officer has considered the extent to which Unitec has already expended resources on the commercial exploitation of the intellectual property, and has entered into arrangements with the originator to ensure that Unitec receives appropriate consideration for such expenditure, as described in section 3.2 (9) of this policy.
- 6) Staff who join Unitec and who wish to pursue existing projects that appear to have commercial potential can seek involvement by Unitec in commercialisation of the projects provided that such involvement would not contravene the intellectual property policies of their previous employer.

### **3.1.3. Use by Non-Owners**

- 1) Section 3.1.3 of this policy outlines the conditions associated with the provision of a licence:
  - a) to Unitec, where Unitec has assigned its ownership rights to intellectual property to the originator; and
  - b) to the originator, where Unitec is the owner of intellectual property as described in this policy.
- 2) Where Unitec is the owner of intellectual property in any materials created by an originator, Unitec agrees to grant to the originator, without charge, a royalty-free non-exclusive and irrevocable licence to use the intellectual property in those materials for teaching and research only. The originator agrees to keep intellectual property confidential where confidentiality is required.
- 3) Where an originator is the owner of intellectual property in materials created by him or her in the course of fulfilling his or her contract of employment with Unitec, the originator agrees to grant to Unitec, without charge, a royalty-free non-exclusive and irrevocable licence to use the intellectual property in those materials for teaching and research.
- 4) Any licence granted pursuant to this section will be subject to an undertaking by the licensee not to:
  - a) Commercialise the intellectual property;
  - b) Use the intellectual property for any purpose other than for research and teaching;
  - c) Do anything that could jeopardise the rights of the licensor including actions that could jeopardise the protection or enforcement of the

rights of the licensor and/or interfere with commercial exploitation, such as the disclosure of confidential information or know-how without the consent of the licensor;

### 3.2. Commercial Exploitation and Intellectual Property Protection

- 1) When an originator believes that a new idea ("Invention") has commercial potential, he or she must approach the Intellectual Property Officer.
- 2) The originator will then be requested to complete an Invention Disclosure Form.
- 3) The information disclosed in that document regarding the invention will be evaluated with respect to novelty, patentability, commercial potential and other relevant parameters.
- 4) The Intellectual Property Officer will decide within a reasonable period of time (normally no more than 90 days) whether or not Unitec wishes to commercialise the Invention.
- 5) If Unitec decides to commercialise the Invention, an intellectual property strategy will be formulated in consultation with the originator.
- 6) If the Intellectual Property Officer is advised or believes that the confidentiality of certain information must be maintained in order for intellectual property to be protected or successfully exploited, the Intellectual Property Officer must:
  - a) consult in confidence with the originator and any other relevant parties; and
  - b) determine a time when publication of the information may take place, taking into account the principle set out in section 1.1 (1) of this policy.
- 7) The Intellectual Property Officer will notify all decisions taken in respect of this section to the Council of Unitec (through such mechanisms as the Council may from time to time determine) and to the originator.
- 8) If the Intellectual Property Officer decides that Unitec does wish to become involved or continue its involvement in the process of commercial exploitation of any intellectual property, the originator shall not take any steps nor negotiate with any third party for the commercial exploitation of the intellectual property except on behalf of Unitec and only with the express authority and at all times under the direction of the Intellectual Property Officer.
- 9) Before the Intellectual Property Officer makes any decision pursuant to paragraph 3.2 (4), the Intellectual Property Officer shall first:
  - a) consider the extent to which Unitec has already expended resources on the development and/or commercial exploitation of the intellectual property (including but not limited to patents and other protection, and staff salaries) and
  - b) enter into arrangements with the originator to ensure that Unitec receives appropriate consideration for such past expenditure from the originator, as well as the costs of assigning the intellectual property to the originator. In most cases, reimbursement by the originator to Unitec of all or part of such expenditure and costs would constitute appropriate consideration.

### 3.3. Distribution of Financial Returns

- 1) Where Unitec derives any financial return from the commercial exploitation of intellectual property, it must be distributed according to the provisions set out below.
- 2) After deducting costs of protection, marketing, legal fees, defence costs and other expenses directly related to the commercialisation, eg travel expenses, sale of artwork; (excluding costs of administration) net revenues received by Unitec will be distributed as indicated below, except where originator(s) choose to negotiate a different arrangement with Unitec.

Originator	50%
Faculty or Academic Department	20%
Unitec	30%

- 3) Where more than one originator is involved, the originators must decide amongst themselves how the originator's share of annual net revenue is to be divided between them and inform the Intellectual Property Officer of their decision in writing.

In the event that any or all of the originators cease to be employed by Unitec, the arrangement shall continue. If a staff member dies, his or her estate shall receive any subsequent revenues.

- 4) A Revenue Sharing Agreement will be executed between Unitec and the originator(s) to formalise the future revenue sharing distribution and the obligations of the parties. The Revenue Sharing Agreement will be honoured by Unitec in the event of an originator ceasing to be an employee of Unitec.
- 5) Income and expenditure streams rarely coincide, and Unitec may retain funds to cover known or expected future expenditure on the project.
- 6) Revenue sharing as indicated in section 3.3 (1) will typically be for licensing agreements. Revenue sharing for spin-out companies will be negotiated on a case by case basis.
- 7) The commercialisation of intellectual property will be managed on a day by day basis by Unitec staff with appropriate skills and responsibilities in consultation with the originators and also taking professional advice as appropriate.
- 8) It will be the responsibility of the Research Office to record, monitor and manage the Unitec IP portfolio. This may include filing of patents, renewal of patents, auditing of licensees and the monitoring of income and income distribution.



### **3.4. Agreements with Third Parties**

- 1) Unitec may enter an agreement with another party that controls the ownership and exploitation of intellectual property. Where ownership of intellectual property does not rest with Unitec, the consent of the originator(s) must be obtained before any such agreement is concluded.
- 2) In negotiating such an agreement Unitec must, as far as practicable, ensure:
  - a) that the originators in question are consulted appropriately; and
  - b) that the terms of the agreement are consistent with the principles set out in the other provisions of this policy.
- 3) An agreement reached by Unitec with a third party might include assigning the rights to the intellectual property to the third party in return for an up-front payment or for the payment of royalties or for both.

### **3.5. Dispute Resolution**

- 1) If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy depends, the Intellectual Property Officer must appoint a mediator external to Unitec who can assist the parties in resolving their dispute.
- 2) If such a dispute cannot be resolved through the assistance of a mediator, the Intellectual Property Officer must appoint an arbitrator to investigate and decide the matters in dispute.
- 3) In selecting a mediator or arbitrator, the Intellectual Property Officer must choose a person who is acceptable to all parties. If the parties cannot agree within 30 days, the Chief Executive must appoint a person as mediator or arbitrator, as the case may be.

### **3.6. Information and Education**

- 1) The Intellectual Property Office will periodically provide a professional development workshop on intellectual property with the following objectives:
  - a) to advise staff and students as to their rights, responsibilities and opportunities in relation to intellectual property;
  - b) to advise staff and students as to any changes to this policy; and
  - c) to generate a better understanding of intellectual property issues in general, and so contribute to the creation and development within Unitec of a cooperative and productive environment for learning, teaching, scholarship and research.
- 2) Unitec will seek the cooperation of the Unitec Student Union to act as a source of independent advice for students concerning intellectual property matters and will advise students to seek independent advice before they are asked to agree to undertake activities that may generate intellectual property.

- 3) The Intellectual Property Officer will be required to:
- a) be responsible for the implementation of this policy, especially the requirements as to information and education set out in this section;
  - b) conduct a review of this policy at periodic intervals, or as circumstances demand, and make recommendations as to appropriate changes; and
  - c) provide advice to the Council of Unitec on intellectual property issues generally.

## REFERENCE DOCUMENTS

- [1] [Intellectual Property Commercialisation Procedure](#)  
(includes access to forms and agreements referred to in this Policy)
- [2] [Patents Act 1953](#)
- [3] [Copyright Act 1994](#)
- [4] [Trade Marks Act 2002](#)
- [5] [Designs Act 1953](#)
- [6] [Plant Variety Rights Act 1987](#)
- [7] [Layout Designs Act 1994](#)

## DOCUMENT DETAILS

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