



Academic Board Agenda

Academic Board Officer: Keri Neveltsen

Secretariat, Quadrangle, A14

Phone: 9351 3305; Fax: 9351 3572

E-mail: K.Neveltsen@secretariat.usyd.edu.au

Web site: <http://www.usyd.edu.au/su/ab/>

Enclosure for the agenda

for the meeting of the Academic Board on 13 February 2002

★ 5. Report of the Chair

5.2 General report

5.2.2 University of Sydney (Intellectual Property) Rule 2002

2, 3-12

Recommendation

That the Academic Board:

(1) *recommend that Senate, pursuant to s37(1) of the University of Sydney Act 1989, resolve:*

(a) *to promulgate the new Rule in the form presented as the University of Sydney (Intellectual Property) Rule 2002, to take effect from the date on which it is promulgated in accordance with clause 6 of the University of Sydney By-Law 1999; and*

(b) *to repeal Part 8 of the University of Sydney (Amendment Act) Rule 1999 in its entirety, to take effect simultaneously with the promulgation of the University of Sydney (Intellectual Property) Rule 2002;*

(2) *note associated documents:*

(a) *Intellectual Property Rule: A Guide (which sets out a plain English guide to the Rule); and* 13-16

(b) *Review of Intellectual Property Rule (which indicates changes from the existing Rule).* 16-18

University of Sydney (Intellectual Property) Rule 2002

under the

University of Sydney By-Law 1999

The Senate of The University of Sydney has approved the following Rule pursuant to section 37(1) of the University of Sydney Act 1989 for the purposes of the University of Sydney By-Law 1999.

This Rule:

- (a) takes effect from [insert when]; and
- (b) replaces Part 8 of the University of Sydney (Amendment Act) Rule 1999 in its entirety.

The purpose of this Rule is to deal with matters relating to ownership and development of intellectual property generated by staff and students of, and visitors to, the University of Sydney, recognising that there are sometimes competing demands between publication and the need and desirability for the commercialisation of intellectual property.

Dr W. Adams
Registrar

Dated:

University of Sydney (Intellectual Property) Rule 2002

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University of Sydney (Intellectual Property) Rule 2002

Division 1 -- Dictionary

1 Definitions

In this Part:

Business Liaison Office means the administrative unit of the University of Sydney that has that name, or any replacement of it;

commercial benefit means any benefit that the University receives (whether income, in-kind or otherwise) from the development of intellectual property;

computer program has the meaning ascribed to it by s10 of the *Copyright Act* (1968 (Cth));

costs means any amount (including, without limitation, any Australian or foreign taxes, charges or other imposts, or any legal costs) the University incurs to protect or develop intellectual property;

course means one or more units of study conducted by or on behalf of the University;

create means to produce, invent, design, enhance, generate, discover, make, originate or otherwise bring into existence (whether alone or with another person) and ***creation*** has a corresponding meaning;

develop (and, by extension, ***development***) means, in relation to intellectual property, to make the most of it by any means (whether alone or with another person) for commercial or non-commercial purposes including, without limitation, to apply, publish, exhibit, transmit, enhance, use assign, license, sub-license, franchise, adapt or modify intellectual property;

Department means an academic or an administrative unit of the University and includes, without limitation, a centre or an institute of the University;

Head of Department means a person who is designated as head of a Department;

intellectual property includes rights (including, without limitation, rights of registration or application for registration) relating to:

- (a) literary (including computer programs), artistic, musical and scientific works;
- (b) multimedia subject matter;
- (c) performances of performing artists, phonograms and broadcasts;
- (d) inventions in all fields of human endeavour;
- (e) scientific discoveries;
- (f) industrial designs;
- (g) trade secrets and confidential information;
- (h) trademarks, service marks and commercial names and designations;
- (i) plant varieties; and
- (j) circuit layouts;

but does not include any moral right.

moral right has the meaning ascribed to that term in the *Copyright Act 1968* [as amended by the *Copyright Amendment (Moral Rights) Act 2000*] and recognises three types of moral rights:

- (a) an author's right to be identified as the author of a work – known as the right of attribution of authorship;
- (b) the right of an author to take action against false attribution – known as the right not to have authorship of a work falsely attributed; and
- (c) an author's right to object to derogatory treatment of his or her work that prejudicially affects his honour or reputation – known as the right of integrity of authorship of a work;

originator means a staff member, student or visitor, who creates intellectual property that is subject to this Rule regardless of whether he or she creates the relevant intellectual property alone or jointly with another person;

protect means any thing done or that is necessary to do 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;

reported intellectual property means any intellectual property reported by a staff member under Rule 12 or by a student under Rule 16;

staff member means a person who is a member of the University's academic or non-academic staff (whether full-time, part-time or casual) at the time he or she creates any intellectual property;

student means a person who is enrolled as a student of the University at the time he or she creates any intellectual property;

teaching material means any thing created in any medium by a staff member in pursuance of the terms of his or her employment with the University (but regardless of whether this occurs under a specific direction to do so) as an aid or a tool for instruction in a course;

third party agreement means an agreement between the University and another person (other than a staff member or a student) that regulates intellectual property and includes, without limitation, agreements with research funding bodies;

third party activity means any activity in which the University engages or otherwise participates and which is the subject of a third party agreement;

visitor means a person who is not a staff member or student of the University (but who may be a staff member or student of another university), who:

- (a) takes part in any research, teaching or other activity that would normally be conducted by a staff member or student; or
- (b) visits a part of the University in which research or scholarship, or any related activity, is conducted,

at the time he or she creates any intellectual property;

work means a literary work, a dramatic work, a musical work, an artistic work, cinematograph film, multimedia work or computer program.

2 Interpretation

- (1) In this Rule, a reference to any law includes any amendment or replacement of it.
- (2) This Rule is to be read and interpreted in conjunction with the University's *Code of Conduct for Responsible Research*, as amended from time to time.

Division 2 - Ownership of intellectual property created by staff members

3 University asserts ownership

- (1) Subject to Rule 4(1), the University asserts ownership of all intellectual property created by a staff member in pursuance of the terms of his or her employment with the University, including, without limitation, copyright in any material that is (i) teaching material, (ii) computer programs; or (iii) created at the express request or direction of the University.
- (2) In the absence of a third party agreement to the contrary, the ownership and the associated rights of all intellectual property generated from a research project funded by any publicly funded research agency will vest in the University.

4 Exceptions to Rule 3

- (1) The University does not assert copyright ownership over any work created by a staff member that is a work of a scholarly nature, including, without limitation, a journal article, conference paper, creative works or proceeding or text ("*exempt intellectual property*") but subject to the conditions that:
 - (a) the University retains a non-exclusive, royalty-free, perpetual licence to develop that exempt intellectual property anywhere in the world and in any manner the University thinks fit, subject to any obligation that the University may have relating to any moral right subsisting in that work; and
 - (b) if the University exercises its rights under Rule 4(1)(i), then the originator is entitled to a share of any commercial benefit in accordance with Rule 14.
- (2) The University grants to the author of any teaching material that is subject to Rule 3(1) a non-transferable, perpetual, royalty-free licence to use the teaching material created for the sole purpose of teaching any course ("*course*"). This licence does not:
 - (a) include any right of sub-licence; or
 - (b) where the teaching material is a work of joint authorship as defined in section 10 of the *Copyright Act 1968* (Cth), does not confer on the author any additional rights to deal with the teaching materials except as a joint author.

5 Sharing commercial benefits

- (1) Subject to Rule 5(2), staff members who create intellectual property over which the University asserts ownership under Rule 3 are entitled to a share of any commercial benefits that the University receives from developing it in accordance with Rule 13.

- (2) The sharing of commercial benefits with staff members in accordance with Rule 5(1) does not apply to any use of teaching materials as an aid or tool for instruction in a course (“*course*”).

Division 3 –Intellectual property created by students

6 Ownership

The University does not assert any claim in respect of intellectual property created by a student, unless:

- (a) prescribed otherwise by law; or
- (b) that the student agrees otherwise (including in any form prescribed by law).

7 Assignment

- (1) A student cannot be required by the University to assign his or her intellectual property:
 - (a) 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
 - (b) 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 the University, where a student creates intellectual property jointly with a staff member or a visitor, the University will negotiate with that student in connection with the development of that intellectual property.

- (2) 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 development (“*activity*”) then, before that student is permitted to begin that activity:
 - (a) the University may, as a condition of the student participating in that activity, require the student to:
 - (i) assign his or her intellectual property; and
 - (ii) 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;
 - (b) it is the responsibility of (as the case may be):
 - (i) the person who is in charge of that activity (for example, the chief researcher); and
 - (ii) the student’s supervisor,to notify the student about all requirements for participating in that activity including, without limitation:

- (a) 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
- (b) especially where a student is required to assign his or her 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).

Note: Legal advice may be arranged through, as the case may be, the Students' Representative Council or the Sydney University Postgraduate Representative Association.

- (3) If a student is required to do any thing under Rule 7(2), then that student should be given a reasonable period ("***response deadline***") to review all documentation and seek appropriate advice (including legal advice), which in most cases should not be less than 14 days. However, the response deadline may be reduced by the University, depending on what is reasonable under the circumstances including taking into account any obligations to third parties that the University may have in respect of that activity.
- (4) If a student does not agree to do any thing required under Rule 7(2), or else does not respond to a request to do so, on or before the response deadline, then the University may decline to permit the student to participate in that activity.

8 Sharing commercial benefits

- (1) Students who assign their intellectual property rights and, if required to do so, give consent in respect of any moral right under Rule 7(2) are, subject to any agreement, entitled to a share of any commercial benefits that the University receives from developing that intellectual property according to Rule 14.
- (2) If a student assigns his or her intellectual property under Rule 7(2), the University will pay any stamp duty assessable on any instrument that the University deems necessary to give effect to that assignment.

Division 4 – Ownership of intellectual property created by visitors

9 Requirement of confidentiality and assignment

As a condition of any visitor:

- (a) having access to and use of any University facilities, equipment or accommodation;
- (b) having access to and use of any intellectual property of the University; or
- (c) participating in any teaching or research activities of the University (including any third party activity),

("visitor privileges"), the University may require that visitor to do one or more of the following things:

- (i) sign a confidentiality agreement on terms acceptable to the University;

- (ii) disclose to the Business Liaison Office, within 14 days of its creation, full details of any intellectual property created by that visitor and arising from the visitor being granted those visitor privileges;
- (iii) do all things and sign all instruments necessary to assign to the University, or another person designated by the University, any intellectual property created by that visitor arising from that visitor being granted any visitor privileges; and
- (iv) give consent in relation to any moral right he or she may have in the relevant work.

10 Assumption

Unless and until the University gives a visitor notice under Rule 9:

- (a) a visitor is entitled to assume that the University:
 - (i) makes no claim in respect of any intellectual property;
 - (ii) does not require the consent of the visitor in relation to any moral right he or she may have in any work,that the visitor creates in respect of any research conducted by the visitor using any University facilities or intellectual property of the University.

but

- (b) must still observe the visitor's obligations under Rule 9(ii).

Division 5 - Reporting and developing intellectual property

11 Staff responsibilities

The *Code of Conduct for Responsible Research*, as amended from time to time, makes it clear that staff 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.

12 Reporting by staff members

- (1) Staff members who believe they have created any intellectual property for which the University asserts ownership pursuant to Rule 3 must, as soon as possible after its creation:
 - (a) report that fact to their Head of Department and to the Business Liaison Office; and
 - (b) provide full details of the intellectual property created and the names of the originators in a form prescribed by the Business Liaison Office from time to time.
- (2) Staff members who create exempt intellectual property within the meaning of Rule 4(1) must provide a copy of the thing to which that intellectual property relates to their Head of Department within 90 days of its creation or modification.
- (3) In the event that the Head of Department considers that the intellectual property reported in accordance with Rule 12(2) is intellectual property over which the

University asserts ownership and is subject to Rules 3 and 12(1) then that Head of Department shall:

- (a) notify both the staff member and the Business Liaison Office within 7 days;
 - (b) together with the staff member take such actions as required to protect the value of the intellectual property; and
 - (c) provide sufficient disclosure to the Business Liaison Office to enable assessment of the value of the intellectual property.
- (4) If notice is given under Rule 12(1), the University has 8 weeks from the time the Business Liaison Office receives full details of intellectual property reported under Rule 12(1)(b) (“*notice period*”) in which to decide whether it wishes to protect or develop that intellectual property (“*reported intellectual property*”). The notice period may be extended beyond 8 weeks with the consent of the staff member who gave notice under Rule 12(1).
- (5) Until the University makes a decision under Rule 12(4), the staff member who gives notice under Rule 12(1) must take all reasonable steps to protect the reported intellectual property. The University encourages staff members to seek advice from the Business Liaison Office on how best to do so.

13 Dealing with reported intellectual property

- (1) If the University:
 - (a) makes no decision by the end of a notice period (or any extension of it); or
 - (b) decides it does not wish to protect or develop the reported intellectual property, then the originator is free, at his or her own cost, to protect or develop the reported intellectual property in any manner he or she chooses.
- (2) Nothing in Rule 13(1) prejudices any right of the University to:
 - (a) claim a share in any commercial benefit received; or
 - (b) recover any establishment costs or continuing costs already incurred by the University,because of any subsequent development of reported intellectual property, unless that right is expressly waived by the Vice-Chancellor in writing.
- (3) If the University decides that it wishes to protect or develop reported intellectual property, then the Business Liaison Office must notify:
 - (a) the staff member concerned; and
 - (b) that staff member’s Head of Department.
- (4) If the University decides to protect or develop reported intellectual property in collaboration with a third party, then the originator should be given the opportunity to participate in any negotiations concerning ownership, protection or development of that reported intellectual property, but:
 - (a) negotiations will be undertaken on a case-by-case basis, according to the relevant circumstances; and

- (b) the University shall make any decisions arising from those negotiations which shall be binding on the originator.

14 Distribution of commercial benefits

- (1) All commercial benefits received by the University shall be distributed as follows, after the University first deducts any costs:
 - (a) one-third to the originator;
 - (b) one-third to the originator's Department; and
 - (c) one-third to the Vice-Chancellor's Innovative Development Fund.
- (2) If it is not practicable to distribute commercial benefits of a non-monetary kind in accordance with Rule 14(1)(b), then the University, after first consulting with the originator, may determine a mechanism for distributing commercial benefits by some other means, which may include, without limitation, the University holding commercial benefits in trust for the originator.

15 Where more than one originator

If there is more than one originator of any reported intellectual property, then any commercial benefits must be distributed according to the individual contribution of each originator to the reported intellectual property, unless those originators agree otherwise, and subject to Rule 14(2).

16 Protecting and developing intellectual property created by students

If students create any intellectual property that they wish the University to protect or develop, then the procedures specified in Rules 10,12, 13 [except Rule 13(2)], 14 and 15 apply, except that, for the purposes of Rule 12(1), they must notify their supervisor and the Business Liaison Office.

17 Application of Rules 14 and 15

The application of Rules 14 and 15 may not be varied in individual circumstances except with the prior written approval of the Vice-Chancellor, or the Vice-Chancellor's nominee.

Division 6 - Dispute resolution

18 Inapplicability of Rule

Rule 19 does not apply to disputes:

- (a) normally dealt with pursuant to the University's *Code of Conduct for Responsible Research*, as amended from time to time; or
- (b) involving third party agreements, unless all parties to those third party agreements first agree to be bound by the procedure set out in it.

19 Procedure

- (1) If an originator has any concerns about the manner in which this Rule is interpreted or applied ("*dispute*"), then that person may notify:
 - (a) any other originators; and

- (b) the Director of the Business Liaison Office,
about that dispute. Any notice given under this Rule 19 must be in writing and must specify full details of the dispute.
- (2) The Director of the Business Liaison Office must, within 14 days of receiving a notice under Rule 19(1) convene a meeting between all persons notified of a dispute in order to try and resolve that dispute.
- (3) If:
- (a) a meeting is not convened under Rule 19(2) within the deadline specified; or
 - (b) a meeting is convened under Rule 19(2), but the dispute is not resolved within 14 days of convening it,
- then the party who gave notice under Rule 19(1) or the Director of the Business Liaison Office must notify the Pro-Vice-Chancellor (Research) to that effect, giving full details of the dispute (including any attempts to resolve it).
- (4) If the Pro-Vice-Chancellor (Research) cannot resolve a dispute referred to him or her under Rule 19(3) within 14 days of that dispute being so referred, then the Pro-Vice-Chancellor must refer that dispute to the Vice-Chancellor, giving full details of the dispute and any attempts to resolve it.
- (5) The Vice-Chancellor must consider any dispute referred to him or her under Rule 19(4) and determine that dispute within 31 days of it being so referred. The Vice-Chancellor's determination is final and binding on all parties to the dispute.

Division 7 - Miscellaneous

20 Review Committee

- (1) There shall be an Intellectual Property committee of the University comprising:
- (a) the Vice-Chancellor or his or her nominee (who shall act as Chair);
 - (b) the Pro-Vice-Chancellor (Research);
 - (c) the Chair of the Research Committee of the Academic Board;
 - (d) one academic staff member from, and nominated by the Pro-Vice-Chancellors of, the academic colleges of the University;
 - (e) one non-academic staff member of the University nominated by the Registrar; and
 - (f) one postgraduate student nominated by the President of the Sydney University Postgraduate Representative Association.
- (2) The role of the Committee is to monitor the operation of this Rule and, where the Committee considers it necessary, to recommend changes for approval by the Senate.
- (3) The Committee should meet at least once annually, but may meet more frequently if required by the Pro-Vice-Chancellor (Research) to do so.

- (4) At each meeting of the Committee, the Pro-Vice-Chancellor (Research) shall give a report to the Committee about the operation of this Rule during the preceding year.

21 Savings and transitional

- (1) This Rule applies to any intellectual property created after the date on which this Rule takes effect.
- (2) If, before the commencement of this Rule a dispute has been notified under Rule 19 but has not been resolved when this Rule commences, that dispute shall continue to be dealt with in the manner prescribed by Part 8 of the *University of Sydney (Amendment Act) Rule 1999* before its amendment.



The University of Sydney

Intellectual Property Rule – A Guide

Introduction

Universities are places of scholarship and research, and those who work in a university value excellence in teaching and research, and assume responsibility for the acquisition, generation and dissemination of knowledge. Intrinsic to this process is the need to have open channels of communication and to be able to engage in discussion freely and without inhibition.

Within this environment, there is the opportunity to develop certain works for their commercial value, as well as their overall contribution to knowledge. To that end, the Senate has approved a rule that regulates the ownership and development of intellectual property generated within the University – from the perspective of academic and general staff, students and visitors.

The amendments made to the rule ensure that the University meets the *National Principles of Intellectual Property Management for Publicly Funded Research*.

The purpose of this document is to provide a guide to the Rule so that staff, students and visitors understand their roles, obligations and rights.

A brief overview of intellectual property and what it means

Intellectual property or, more correctly, *intellectual property rights*, refers to those rights conferred on authors or creators of the following types of works as defined by the World Intellectual Property Organisation (of which Australia is a member):

- ◆ literary, artistic and scientific works
- ◆ performances of performing artists, phonograms and broadcasts
- ◆ inventions in all fields of human endeavour
- ◆ scientific discoveries
- ◆ industrial designs
- ◆ trademarks, services marks and commercial names and designations.

In Australia, intellectual property rights are dealt with in five distinct categories, these being:

- copyright, which is regulated by the *Copyright Act 1968* (Cth)
- registered designs, which are regulated by the *Designs Act 1906* (Cth)
- patents, which are regulated by the *Patents Act 1990* (Cth)

- trademarks, which can exist at common law, or which, if registered, are regulated by the *Trade Marks Act 1995* (Cth)
- other statutory regimes for integrated circuits [regulated by the *Circuit Layouts Act 1989* (Cth)], plant breeders' rights [regulated by the *Plant Breeder's Rights Act 1994* (Cth)], and other rights relating to logos and symbols which are regulated by specific legislation, for example, Olympic insignia.

The common law also recognizes other rights, in particular, confidential information and trade secrets.

It is important to note that there can be no intellectual property in an idea itself – it must be manifested in some tangible form.

Moral rights

The concept of moral rights transcends intellectual property rights of an economic nature. It recognises the personal interest of the creator or author in the integrity of the work. This concept has long been recognised in continental European countries, but has only recently been recognised in Australia with the enactment of the *Copyright Amendment (Moral Rights) Act 2000* (which came into force on 21 December 2000), which recognises three types of moral rights:

- ❖ an author's right to be identified as the author of a work – known as the right of attribution of authorship;
- ❖ the right of an author to take action against false attribution – known as the right not to have authorship of a work falsely attributed); and
- ❖ an author's right to object to derogatory treatment of his or her work that prejudicially affects his or her honour or reputation – known as the right of integrity of authorship of a work.

The right of integrity in a work lasts until the author dies, and the other two types of rights remain in force until copyright ceases to subsist in the work in question. Moral rights vest in the author, regardless of whether the work is created in the course of one's employment. The Act provides for exceptions for infringement of moral rights, based on concepts of reasonableness or consent of the author.

University of Sydney (Intellectual Property) Rule

The Senate has enacted the *University of Sydney (Intellectual Property) Rule 2002* pursuant to its rule-making powers under the *University of Sydney Act 1989*. The Rule regulates intellectual property created within the University in the following ways:

Ownership

Staff members

The University asserts ownership of all intellectual property created by a staff member in pursuance of the terms of his or her employment with the University, including, without limitation, copyright in any material which is (i) teaching material, (ii) computer programs; (iii) anything created at the express request or direction of the University or

(iv) anything the subject of an agreement with a third party (for example, a funding agreement).

The University does not assert ownership over copyright in any scholarly books, journal articles, conference papers, creative works or proceedings or textbooks.

The University retains a non-exclusive, royalty-free, perpetual licence to use or develop any intellectual property rights in any of those things, although the creator will be entitled to a share of any commercial benefits obtained according to the Rule.

In relation to teaching material, the University grants the author a non-exclusive, royalty-free, non-transferable, perpetual licence to use those teaching materials for the sole purpose of teaching a course at another University.

Students

The University has always recognised that students always own any intellectual property that they create unless:

- a) there is a law that says otherwise; or
- b) the student agrees otherwise.

However, a student may agree to transfer or otherwise give up his or her intellectual property rights. Where a student is involved in research activities that involve third party agreements, or where the activity involves the creation of intellectual property of a kind that may be developed in the future, it is the responsibility of both the chief researcher and the student's supervisor to notify the student, *before he or she begins work on that project*, if the third party agreement requires the student to transfer his or her intellectual property or to give consent with respect to any moral rights, and to ensure that the student has a reasonable amount of time in which to take advice (which generally should not be less than 14 days).

Students who transfer their intellectual property rights are entitled to a share of any commercial benefits, subject to any third party agreement (see the section below entitled, *Reporting and developing intellectual property*).

Visitors

Visitors to the University usually have access to and make use of University resources. The Rule requires a visitor to disclose any intellectual property rights that he or she creates at the University, and the University may then decide whether it wishes to claim ownership. The University may also require the visitor to sign an agreement in advance. This may also involve an agreement with the visitor's own institution.

Reporting and developing intellectual property

Staff members are encouraged to report any intellectual property that they create. Apart from any commercial benefits that might come from developing it, it also contributes to the University's research profile, which in turn attracts more funding.

The Rule sets out a procedure for reporting through the staff member's relevant Department and the Business Liaison Office, as well as the University's decision-making process in deciding whether to protect or develop that intellectual property. The Rule also sets out how any

commercial benefits will be shared, if the intellectual property is developed. Staff should note that sharing of commercial benefits does not apply to teaching materials used for the delivery of courses at this University.

Dispute resolution

The University recognises that sometimes disputes can arise about ownership and other issues relating to intellectual property and is keen to implement a process that can deal with these disputes quickly, fairly and cost-effectively. Accordingly, the Rule sets out a dispute resolution procedure.



The University of Sydney

Review of Intellectual Property Rule

Introduction

In 1999, the Senate adopted a new rule (“**Current Rule**”) relating to intellectual property rights as part of its review of the University’s by-laws generally. The rule was incorporated into Part 8 of the *University of Sydney (Amendment Act) Rule 1999*¹. The Current Rule is attached as **Appendix 1**.

Clause 35 of the Current Rule establishes a review committee chaired by the Vice-Chancellor to monitor the operation of the rule and to seek changes as necessary.

Review

On the instructions of the Vice-Chancellor, a Review Committee was convened in accordance with Rule 35 [chaired by the Pro-Vice-Chancellor (Research)] to review the operation of the Current Rule. The Committee (in consultation with the University Solicitor and the Business Liaison Office) recommends that Part 8 of the Current Rule should be repealed and replaced with a new, separate rule (“**New Rule**”) relating to intellectual property. The draft New Rule is attached as *Appendix 2*.

The amendments made to the rule ensure that the University meets the *National Principles of Intellectual Property Management for Publicly Funded Research*.

The differences between the Current Rule and the New Rule are as follows:

- (a) the New Rule generally clarifies some procedural aspects of the Current Rule (for example, the reporting requirements under Division 5) in order to provide more certainty;
- (b) the definition of *intellectual property* has changed to reflect the commonly used WIPO definition². In addition specific references to Australian laws relating to intellectual property (such as the *Copyright Act 1968*) have been removed from the definition to take into account the possibility of registration of intellectual property rights under laws of foreign jurisdictions;
- (c) the changes take into account the *Copyright Amendment (Moral Rights) Act 2000 (Cth)* which came into force on 21 December 2000. That legislation specifically recognises three forms of moral rights – being the right of attribution of authorship, the right against false attribution of authorship and the right of integrity of authorship (that is to say, the right

¹ which was adopted upon the promulgation of the *University of Sydney By-Law 1999*

² the definition can be found in clause 1

of an author to object to treatment of a work that demeans his or her reputation);

- (d) intellectual property rights relating to staff has been revised. The University asserts ownership over teaching materials, and provides a non-transferable, royalty-free perpetual licence to the relevant author to use the teaching material that the author has created for the sole purpose of teaching a course at another university. As is presently the case, the University retains ownership of computer programs, things created at the express direction or request of the University, or things that are the subject of third party agreements (for example, external funding agreements). Staff members retain copyright in scholarly works or conference papers, provided that the University retains a non-exclusive, royalty-free, perpetual licence to develop or use those things, subject to the staff member being entitled to share in any commercial benefits if development occurs and subject to any moral rights that might apply³.
- (e) the distribution of benefits has been amended. Staff members are entitled to a share of any commercial benefits that are derived from the development of their intellectual property except in the case of teaching materials used in teaching a course at the University.
- (f) the section relating to students has been clarified to take into account participation of students in third party agreements⁴. In some cases, it may be necessary for a student to assign his or her intellectual property rights, or give consent in relation to his or her moral rights, where participation in particular research is the subject of a third party agreement. In cases where assignment is required, the student will be entitled to a share of commercial benefits received by the University from development of those intellectual property rights. The previous provisions relating to the responsibilities of chief researchers and students' supervisors have been retained and strengthened to ensure that students are made fully aware of any requirement to assign or consent in relation to moral rights *before* they are allowed to commence their research activities;
- (g) the section relating to visitors has been clarified to now require visitors to report any intellectual property they create, although the University will still retain a discretion whether to claim ownership or other rights or require consent in relation to moral rights⁵;
- (h) the membership of the Review Committee has been reduced to a more manageable size, but without compromising representation of the various stakeholders in future reviews⁶.

³ refer clauses 3, 4 and 5

⁴ refer clauses 6, 7 and 8

⁵ refer clauses 9 and 10

⁶ refer clause 20