



# The University of Sydney

## Intellectual Property Rule – A Guide

**Approved by:** Senate on 3 March 2002

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### 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*

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 texts.

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.

### *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 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.