

## Policies and Procedures

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### Intellectual Property Policy

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<b>Responsible Officer:</b>	<b>Deputy Vice-Chancellor Research, Innovation and International</b>
<b>Policy Editor/Contact:</b>	<b>Director Research, Research Office</b>
<b>Approving Authority:</b>	<b>Executive Committee</b>
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#### 1. Purpose

To protect, promote and manage intellectual property (IP) generated by the staff, students and associated persons with the University and rights & responsibilities of all parties, in connection with teaching, research & innovation and creative endeavour within the University of the South Pacific.

To encourage an entrepreneurial culture and foster IP awareness and commercialisation bringing societal and financial value to the University.

To ensure that IP is exploited to the mutual benefit of the University member countries and stakeholders.

#### 2. Overview

The World Intellectual Property Organisation (WIPO) refers to intellectual property (IP) “as creations of the mind; it embraces inventions, literary and artistic works and symbols, names, images and designs used in commerce. In this document, intellectual property is abbreviated to IP.

As an institution of higher learning, USP is mandated to teach and conduct research. These core activities may create IP in relation to creation of course materials, teaching face to face and online as well as carrying out of researches. The IPs generated will be governed by the IP laws of the jurisdiction where the IP was created

Normally the Intellectual properties in inventions, literary and artistic works, symbols, names, images and designs used as trademarks and researches mandated under contracts of employment or assisted by USP will be owned by USP unless the terms of the contract of employment state otherwise. Intellectual properties created by students will belong to the students unless they assign their rights to USP or another entity or they have decided for their works to become assets in common. The economic rights and moral rights over all copyright works created as well as patents, designs or other IP rights generated will belong to USP unless stated otherwise in the contracts of employment.

The IP Policy describes the principles of IP ownership, licensing, management, commercialisation and the use of IP created by all University staff and students, and other persons associated with the University other than staff or students.

In this policy, persons associated with the University other than staff or students refer to visiting scholars, consultants, adjunct or honorary appointees, and external researchers collaborating with persons associated with the University. This also refers to Pacific peoples who provide traditional knowledge to University researchers.

### **3. Scope**

**3.1** This policy applies to the staff and students of the University including other persons who have signed a written agreement with the University agreeing to be bound by its regulations, policies and procedures.

**3.2** This policy should be read in conjunction with the relevant legislation governing IP including Copyright, Patent and Trademark in the USP member jurisdictions.

**3.3** The IP Policy describes the principles of IP ownership, licensing, assignment, management, commercialization and other uses of IP created by employees under the University.

### **4. Definitions**

#### **4.1 Intellectual Property**

In this policy, the term “**Intellectual Property**” means any output of skill, effort and intellect, including copyright works and includes, but is not restricted to:

- a. circuit layouts; confidential information; teaching and Research materials developed for or by the University; designs; discoveries, Inventions, innovations, ~~publication~~ Scholarly works and patents; newly-discovered plant and animal varieties and topographies;
- b. trade practices (trademark applications, service marks and commercial names and designations);
- c. confidential information, trade secrets and know-how and other proprietary information associated with any of the other designated items of intellectual property;
- d. databases, computer software and related material not otherwise coming within any of the other designated items of IP;
- e. Creative work material not otherwise coming within any of the other designated items of IP and:
- f. literary, artistic, musical and dramatic works in which copyright subsists (including future copyright);
- g. cinematographic and multimedia works in which copyright subsists (including future copyright);
- h. any other intellectual property rights as defined in Article 2 of the Convention (Dated 14<sup>th</sup> July 1967) establishing the World Intellectual Property Organisation (as amended from time to time). <https://www.wipo.int/treaties/en/convention/>

#### **4.2 Teaching Materials**

Any reference to teaching (or course) materials is a reference to content, in any form whatsoever, generated by the staff of the University in the course of their employment with the University for the purpose (whether it be the primary or ancillary purpose) of education. Such works shall include but not be restricted to:

- a. materials developed by staff as part of a learning package or programme and utilising University resources, including lecture notes, study guides, resource materials, course outlines, unit profiles and illustrations, and test/examination questions;
- b. computer programs or software designed and provided for the teaching of a course of study;
- c. literary, dramatic, musical or artistic works incorporated as part of a learning package or programme;
- d. audio, video or other materials produced for and provided as part of a learning program; and
- e. other forms of materials, including website pages, as provided to students or developed by staff in the course of delivering a course, unit or program of study.

#### **4.3 Research Materials**

Any reference to research materials is a reference to content in any form whatsoever produced in the course of, or as a consequence of, research (whether or not research is the primary or ancillary purpose of the activity).

#### **4.4 Creative work**

Creative means an artistic, literary, musical, dramatic, film, sound or multimedia work, performance, diagram, map, chart, photograph or other creative work in which copyright subsists (irrespective of the medium in which the work is recorded)

#### **4.5 Scholarly works**

Scholarly work means copyright works that are intended for academic publication (for example, any article, book, manuscript, or manual) and have been peer reviewed, regardless of format (for example, printed, digital or electronic versions) created by staff, students, and persons associated with the University other than staff or students but excludes education materials.

#### **4.6 Patent**

A patent is an IP right to protect inventions, granted by a country's government as a territorial right for a limited period. A patent to be granted the invention must be: (i) something that can be made or used, (ii) new, and (iii) have an inventive step - not just a simple modification to something that already exists.

#### **4.7 Invention**

A new industrial creation, typically a device, apparatus, or process that the Creator(s) believe may be patentable.

#### **4.8 Creator**

The creator of a work is the person(s) who creates the IP or otherwise makes a substantive intellectual contribution to the creation of IP and to whom this Policy is applicable. A work may have more than one creator.

#### **4.9 Commercialization:** Defined to commercialize. Please refer to clause 6.0

#### **4.10 Indigenous or traditional knowledge:**

It means knowledge systems developed, nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural identity, including as reflected in article 31 of the United Nations Declaration of the Rights of Indigenous Peoples.

#### **4.11 University Resources and Facilities**

In this document, the term University (whether capitalized or not) refers to the University of the South Pacific which is abbreviated to USP. To avoid confusion over ownership

matters, the term University Resources and Facilities in this policy refers to any of the following, utilised during a person's employment or association with the University, or as a candidate or student during their period of attachment: equipment, accommodation, administrative facilities, support services and facilities, utilities, existing background Intellectual Property, and other inputs made directly or indirectly by the University to support the creative process.

#### **4.12 Background IP**

Background IP is defined as IP that existed before or owned by a Party (Staff, students and associated persons with the University) prior to them joining USP.

#### **4.13 Background confidential information**

Background confidential information means any data or information which staff and/or students, and persons associated with the University other than staff or students, for example, as a result of the terms and conditions of a previous employment contract of the non-disclosure agreement.

### **5. Policy Statement and Guideline**

This policy sets a framework for the protection and translation of the IP arising from the University's work into products, services and processes. It also clarifies the University's position regarding ownership and use of IP, and the rights and responsibilities USP and the creator.

It is considered that, if an individual produces IP while being employed, studying and associated with USP, then the University has legal ownership or proprietary rights over that IP notwithstanding that the individual may retain certain rights. The University encourages the discovery, inventions, sharing and exploitation of innovation and knowledge.

USP will be the owner of the IP, but the IP ownership can belong to the staff member provided the staff does the creation:

- a. entirely on his or her own time;
- b. without substantial use of the University's resources;
- c. does not relate directly to their University work;
- d. does not violate the terms of the employment contract, and
- e. does not make use of the outcomes of their work performed for the University. or otherwise jointly owned if created by more than one creator.

#### **5.1 Ownership and Licensing of Intellectual Property Generated by USP Staff and Students.**

**5.1.1** The University will assert ownership of IP created or invented by the University staff in the course of their employment (excluding scholarly works) including, but not limited, to teaching and research materials but excludes personal lecture notes that are not made available to students or personal notes taken by students to assist in study.

**5.1.2** The University will not assert ownership of IP rights developed by students. However, the University may assert its right to claim ownership of IP developed by students in the following circumstances.

- a. when IP arises from a student's project in relation to a USP course or unit; or

- b. when IP arises (except copyright in a thesis) from a project which in part has been funded by an external party, or where an external party has some other interest in a project. The University or the external party may require an assignment of a student's IP rights.

**5.1.3** Where the University notifies a student that it seeks to claim ownership of IP under Clause 5.1.3, the student will:

- a. maintain the confidentiality of the materials incorporating the IP;
- b. be required to sign an Assignment Agreement (see Appendix 2; form available at [www.usp.ac.fj/ip](http://www.usp.ac.fj/ip)); or
- c. undertake to work on another project if they do not agree to (a) or (b).

**5.1.4** Where the University claims ownership of IP in accordance with Clause 5.1.2, students will be accorded the same rights as a staff regarding the distribution of income under Clause 6.3.1.

**5.1.5** The University expressly licenses staff members and student researchers to publish scholarly works authored by them in journals, monographs, books, conference papers, proceedings and other texts subject to the condition that such publication would not disclose traditional knowledge or confidential information without a permission from relevant Head of the School/Section.

## **5.2 Ownership of Intellectual Property generated by Persons associated with the University (other than Staff or Students).**

**5.2.1** The University may require any person other than a staff or student of USP, prior to being permitted:

- a. access to and/or use or enjoyment of any University-owned or controlled facilities, equipment, accommodation, Intellectual Property; and/or
- b. participation in any teaching and/or research activity or activities of the University,

to sign an agreement (sample in Appendix 2; form available at [www.usp.ac.fj/ip](http://www.usp.ac.fj/ip)) requiring that person to take all steps necessary to assign to the University, or its designate, any Intellectual Property created by that person arising from the permissions granted above.

**5.2.2** Subject to the provisions in **Clause 5.2.3**, adjunct academic appointees, visiting fellows and other individuals working at the University and making significant use of the University's resources and facilities shall be treated as if they are a staff of the University under this policy during the period of their appointment.

**5.2.3** Where a visiting appointee holds a substantive appointment at another institution, the University of the South Pacific will not claim ownership for any IP generated by such persons in the course of their employment by the other institution, nor will the other institution claim ownership of any IP arising from the adjunct or visiting appointment at USP. When a staff member of USP accepts an honorary or visiting appointment at another institution, it is expected that a similar agreement shall apply.

**5.2.4** Where the University claims ownership of IP created as a result of Pacific peoples providing information on traditional knowledge to the University staff who then write it up, the third-party person(s) will, after consultation with the wider community, be accorded some royalty regarding the distribution of income, as stipulated in Clause 6.3.1.

### **5.3 Transfer of Ownership**

In case the University decides not to pursue IP protection and/or its commercialization, if requested, it may take steps to assign the IP rights to the creator(s), contingent on any other superseding contract rights of external parties.

### **5.4 Background IP and Confidential Information Utilization**

“. Students, staff and visitors to the USP may have interests in Background IP (defined in point 4.12) and or Background confidential information (defined in point 4.13). If they wish to develop it further whilst at the University, they must declare their intention to the Head of the School/Section or Director Research and:

- a. provide a description of the existing IP;
- b. give the names of any co-owners or others who have a legal interest in the Background IP; and
- c. notify the Head of the School/Section or Director Research on any restrictions in the use of the Background IP.

## **6. Creation and Exploitation of USP Intellectual Property**

### **6.1 Notification of creation of University Intellectual Property**

**6.1.1** Where University staff, or students, develop University IP that may have commercial potential for the University, they or their Head of School, should notify the Office of the University’s Research Office (Director Research) of the creation of IP within two weeks of its generation or, where this is not possible, at the soonest opportunity after that time. An IP Disclosure form is available at [www.usp.ac.fj/ip](http://www.usp.ac.fj/ip).

**6.1.2** Information disclosed under Clause 6.1.1 must be kept confidential until the Deputy Vice-Chancellor (Research and Innovation) advises otherwise.

**6.1.3** The Deputy Vice-Chancellor (Research and Innovation) will advise within a reasonable period University staff or students who have an interest in University IP, whether or not the University wants to exploit University IP disclosed under Clause 6.1.1.

### **6.2 Exploitation of University Intellectual Property**

**6.2.1** This clause applies when the University decides it wants to exploit University IP.

**6.2.2** Any University staff member involved in the creation of University IP is taken to have agreed that the University has an irrevocable authority to act on their account and to execute any document that the University decides is necessary for commercial exploitation of University IP consistent with the objectives of this policy.

**6.2.3** University staff must comply with all reasonable directions and provide all reasonable assistance in the exploitation process, including maintaining the confidentiality of information incorporating the IP, providing information promptly on request, attending meetings with potential licensees, and advising on further development.

Breach of clause 6.2.3 may constitute misconduct and may be the subject of disciplinary action and/or possible legal action.

- 6.2.4** The University may consult on a confidential basis with appropriate experts and advisers before deciding on appropriate actions for the exploitation of University IP. Those actions may include, but are not limited to:
- a. requesting assistance and advice on patenting, funding and other aspects of the commercialization of IP and ;
  - b. the filing of a patent application in the name of the University with the University staff member named as originator;
  - c. the identification of potential licensees;
  - d. the assignment of rights to a third party; or
  - e. the formation of a limited liability company to exploit the IP.
- 6.2.5** The University will use all reasonable endeavors to pursue the exploitation on time.
- 6.2.6** If the University does not wish to be involved in the exploitation of University IP disclosed under Clause 4.6.1, it may agree to assign or license it to University staff or creator upon commercial terms, or on terms approved by the Vice-Chancellor. USP may seek to get back any costs incurred in protecting the IP (e.g., patent prosecution costs) up to the point of assignment to the staff member .Any exploitation of University IP by University staff after it is assigned or licensed to them will be at their own risk.

### **6.3 Distribution of IP Revenues**

The University owns all IP created by a staff member, as set out in the policy statement and guideline (point 5) but wishes to share the financial benefits primarily to encourage the IP generation with the staff member (s) received from successful commercialization of activities related with Research and Innovation.

- 6.3.1** The Office of the Deputy Vice-Chancellor (Research and Innovation) will distribute the University's share of income arising from the exploitation of University IP (after deducting the costs associated with IP generation, registration and commercialization as follows:
- a. 50% to the University staff member and/or student involved in the creation of the IP . Where there is more than one creator, this 50% will be distributed to an equal or pro rata share, based on contribution;
  - b. 20% to the school (Discipline) in which the University staff member or student involved in the creation of the IP or is/was deployed;
  - c. 15% to the University, to be used at the discretion of the Deputy Vice-Chancellor (Research and Innovation);
  - d. 15% to the originator or primary source of traditional knowledge that University staff collected and then developed. Where this is not applicable, this 15% will be added to (c).

## **7. Dispute Resolution**

- 7.1** Disputes arising under this policy will, in the first instance, be referred to the Deputy Vice-Chancellor- Research and Innovation for the consideration.

7.2 If this is not successful, then it will be taken to the Vice-Chancellor and President who will make a determination.

7.2 A person dissatisfied with the Vice-Chancellor and President's decision may refer the matter to the University Visitor whose decision is final.

## **8. Conflicts of Interest and Commitment**

8.1 Staff members and persons associated with the University must act in the best interests of the University. They should avoid situations where their external interests can lead to compromise with their duties, commitment and responsibilities of this policy and employment with USP. 8.2 Staff members who provide consulting services and those charged with approving such activities on behalf of the University are responsible for ensuring that any related agreements with external interest are not in conflict with the University's IP Policy and its interpretation.

## **9. Confidential Information Obligations**

9.1 The IP developed by University staff, students and affiliated associated persons may receive information concerning research, innovation and creative work undertaken at the University, if disclosed, could prevent innovation, patent or design, publication, or would be of significant value to competitors. Such information on research that is yet to be published, or otherwise yet to become publicly available, is to be considered confidential information. Therefore staff, students and associated persons of the University are not permitted to disclose such confidential information outside of the University without the written consent of the person who has undertaken the research, innovation and creative work, or who is the originator of any artistic, dramatic or musical works.

9.2 Where commercialisation is contemplated, University staff, students and affiliated associated persons must not act in a manner that would result in the loss of the opportunity to protect or commercialise University IP; or the University is in breach of obligations to third parties concerning intellectual property.

## **10. Moral Rights**

10.1 The University recognises the moral rights of the creators of works in which copyright subsists in accordance with legislation governing Copyright in the USP member jurisdictions. These rights include the right of attribution of authorship, the right that a work not be falsely attributed and the right of integrity of authorship (that a work not be unreasonably treated, altered or used in such a way that it harms the reputation of the creator).

10.2 The University will wherever possible, protect the moral rights of staff, students, emeritus or honorary appointees, visitors, or visiting fellows, particularly where the specified acts may affect academic standing or the proper attribution of academic work intended for open publication. If necessary, under an agreement between the University and a third party, the creator may be requested to provide written consent to specified acts with respect to their moral rights in works created pursuant to such third party agreement.