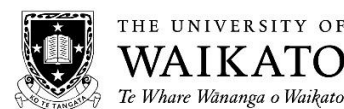


# Intellectual Property Rights Policy



**Responsibility for policy:** Senior Deputy Vice-Chancellor

**Approving authority:** Vice-Chancellor

**Last reviewed:** August 2016

**Next review date:** August 2021

## Preamble

The University has an obligation under section [268](#) of the [Education and Training Act 2020](#) to advance, disseminate, and assist in the application of knowledge. In the course of their teaching, research and intellectual activity, staff members and students create new ideas, inventions and creative works, or 'intellectual property', and make them available to the wider community. This may be in the form of publications, conference and other public presentations, and in some cases, through the commercial development of products, processes or ideas.

Under New Zealand law, intellectual property created by an employee in the course of their duties is the property of the employer. However, the University recognises that its staff members have many and varied roles and its policy in relation to intellectual property needs to be sufficiently flexible to accommodate them. In the case of materials created specifically for teaching purposes and, in some cases, inventions, the University claims the intellectual property rights so that it can explore their future potential for the mutual benefit of the creator(s), their School/Division or equivalent and the wider University. In the case of the copyright of some books, journal articles, conference papers, art works and musical recordings the University does not generally assert ownership.

The University manages its intellectual property in a manner that encourages and rewards its commercialisation and facilitates on-going research. It also has a responsibility to operate in accordance with sound financial principles and with the aim of increasing its income from non-public sources. Collaboration with industry is an important aspect of external funding and ensuring technology transfer. External funding is critical to the on-going viability of the University, not only because it funds research, but because it also facilitates the establishment and growth of vibrant, well-resourced research groups and facilities, builds research credibility, and attracts high quality staff and students. Intellectual property rights enable and facilitate appropriate agreements relating to ownership and the use of intellectual property to be developed in the course of such collaborations.

## Application

1. This policy applies to all staff and students of the University of Waikato, and visiting researchers using University of Waikato facilities and resources.

## Purpose

2. The purpose of this policy is to make explicit how the University's intellectual property rights are derived, to set out how those rights might be protected, and to ensure that intellectual property is exploited to the mutual benefit of the appropriate stakeholders.

## Related documents

3. The following documents set out further information relevant to this policy:
  - [Independent Contractor Agreement](#)
  - [Policy for Members of the Academic Staff Engaging in Commercial Consultancy Activities](#)
  - [Staff Code of Conduct](#)
  - [Student Discipline Regulations](#)

## Related legislation

4. This policy takes account of the following legislation:
  - [Copyright Act 1994](#)
  - [Designs Act 1953](#)
  - [Fair Trading Act 1986](#)
  - [Hazardous Substances and New Organisms Act 1996](#)
  - [Layout Designs Act 1994](#)
  - [Medicines Act 1981](#)
  - [Patents Act 2013](#)
  - [Trade Marks Act 2002](#)

## Definitions

5. In this policy:
  - commercialisation** means utilising intellectual property to gain, or attempt to gain, a benefit, whether financial or other
  - copyright** means a particular type of intellectual property granted by statute that exists in original works that are recorded, in writing or otherwise, and accords the author or originator (or any party to whom ownership has been transferred), for a limited period, the exclusive privilege to make copies of the work for publication and/or sale
  - intellectual property** means any discovery, innovation, invention, form, shape, sound image, expression, technique or process which is the product of skill, effort or intellect, including (but not limited to) copyright works, inventions (patentable or not), designs (registered or unregistered), trademarks, (registered or unregistered), circuit layout rights, plant variety rights, and confidential information
  - intellectual property rights** means any and all rights and interests in any intellectual property created by staff, students and visiting researchers in the course of their relationship with the University and any like rights, as well as the rights to apply for protection of intellectual property in any country
  - invention** means a product or method that is novel, innovative and useful
  - inventive contribution** means a creative or conceptual contribution to the development of an invention, without which the invention would not have been created
  - mātauranga Māori** means a body of knowledge, innovations and practices generated within Māori communities which can be disseminated in various forms, including but not limited to, oral, written and electronic
  - normal duties** means the duties carried out or expected to be carried out by a staff member in the course of their employment and pursuant to their employment agreement with the University of Waikato, and may include:
    - University administration, or
    - teaching or preparation for teaching any University course, or
    - any research undertaken:
      - at the specific request of the University, or
      - using University facilities or resources (excluding incidental use), or
      - on behalf of the University.
  - staff member** means a general or academic member of staff of the University of Waikato or a contractor to the University
  - student** means a person enrolled in one or more University of Waikato credit-bearing papers
  - visiting researcher** means a staff member or student from another University, research institution, government agency or organisation participating in a collaborative research project with the University of Waikato, whether in person or by distance.

## **Principles**

6. The University recognises that its staff members, working both as individuals and in groups, and often in collaboration with students and visiting researchers, are the original creators of new knowledge and intellectual property.
7. The original creators of intellectual property, and the University, have certain rights in relation to that intellectual property that must be protected.
8. The University recognises and endorses the traditional academic freedom of staff to publish research and scholarly documents and to produce creative and artistic works without restriction; the University does not assert ownership of copyright of such works (e.g. books, journal articles, conference papers, art works and musical recordings) unless specified in clauses 12-18 of this policy.
9. When dealing with intellectual property that includes mātauranga Māori, and in the context of the [WAI262](#) claim report, the principles of Te Tiriti o Waitangi will be applied by the University.

## **Authority to make decisions under this policy**

10. Authority to make decisions on behalf of the University under this policy rests with the Senior Deputy Vice-Chancellor.

## **Staff and intellectual property**

11. Subject to clause 8 and clauses 12-19 of this policy, intellectual property created by a staff member in the course of their employment at the University is normally the property of the University.
12. The University asserts its right to ownership of computer software code and databases developed by staff members in the course of their employment with the University.
13. The University reserves the right to assert ownership of all intellectual property associated with material prepared for teaching purposes, including (but not limited to):
  - resource materials
  - multimedia presentations, including MOOCs
  - computer programs.
14. The University will normally grant to staff members a non-transferable, royalty-free licence for the duration of their employment with the University to use the University's intellectual property in material prepared for the purpose of teaching any academic programme of the University (whether that programme is being used or not) or for other purposes of the University.
15. If a staff member has prepared teaching material for external publication (e.g. as a textbook), the University will normally waive its ownership of copyright in favour of the author/s, but may attach conditions to such a waiver.
16. Preparatory material for teaching (notes, etc.) which are not intended for delivery are not owned by the University.
17. The University does not assert ownership of intellectual property derived from activities undertaken in a private capacity (i.e. not as a staff member or representative of the University, and not using University premises, facilities or resources), however a staff member who uses their own intellectual property in their activities for the University will be deemed to have granted the University a royalty-free, non-transferable, perpetual licence to use the same for the purpose of teaching and/or research unless they notify the University beforehand and an alternative agreement is reached.
18. Ownership of intellectual property associated with externally funded activities (research contracts, teaching contracts, consultancies) carried out under the auspices of the University may differ according to the negotiated contract or, in the absence of a contract, in accordance with the legislation that governs the external relationship (the legislation may include but is not limited to that listed in clause 4 of this policy); when entering into external contracts, the University will

give due regard to this matter and ensure that staff members or students involved in the contract are fully aware of the negotiated terms for intellectual property ownership and exploitation.

19. The University recognises that a staff member participating in a collaborative research project with another institution may also be required to comply with the intellectual property rights policy of the other institution; an agreement to abide by, vary or waive the normal provisions of this policy (see clause 40 of this policy) and/or to abide by, vary or waive the provisions of another institution's intellectual property rights policy must be established in writing by both parties prior to relevant work being undertaken.

### **Students and intellectual property**

20. Subject to the exceptions set out in clauses 21-23 of this policy, intellectual property created by a student in the course of their study or research at the University is normally the property of the student.
21. In situations where:
  - a. assignment of intellectual property is a precondition of a scholarship or funding sponsor, or
  - b. the student work is a subset of a larger project which is likely to result in a commercial outcomethe intellectual property may be assigned in advance by the student (with their full knowledge and agreement) to the University and/or a third party.
22. In situations where:
  - a. the intellectual property involves intellectual and inventive contributions from University staff members, or
  - b. the student work incorporates, relies on or builds on existing intellectual property belonging to the University or a third partyit may be necessary for the University and the student to negotiate shared ownership which is fair to all parties.
23. A student who wishes to carry out research under an externally-funded research contract, or use existing intellectual property belonging to the University or a third party may be requested to assign their intellectual property rights to the University or another party (sponsor) prior to, and as a condition of, commencing work on the research.
24. Before requesting that the student assign their intellectual property rights under clause 23 of this policy, the University will provide the student with an explanation of the reasons for the assignment and will advise the student to seek independent advice regarding the assignment.
25. The University will not enter into a contract that prejudices the assessment of a student's academic performance or a student's ownership of copyright in a dissertation, thesis or other assessable work.
26. Where a student has assigned their intellectual property rights with respect to inventions or other potentially commercialisable intellectual property to the University, they have the same rights and responsibilities as a staff member, as set out in clauses 11-19 and 29-34 of this policy.

### **Visiting researchers and intellectual property**

27. A visiting researcher may make use of the University's intellectual property, facilities and other resources and will normally be subject to the same intellectual property rights and responsibilities as a staff member, as set out in clauses 11-19 and 29-34 of this policy.
28. The University recognises that a visiting researcher may also have responsibilities to their home institution regarding intellectual property ownership that may need to be taken into consideration in decisions relating to ownership and the apportionment of benefits from intellectual property; an agreement to abide by, vary or waive the normal provisions of this policy (see clause 40 of this policy) and/or to abide by, vary or waive the provisions of another institution's intellectual property rights policy must be established in writing by both parties prior to relevant work being undertaken.

### **Declaration, protection and commercialisation of intellectual property**

29. A staff member who has identified that an invention or any other intellectual property created in the course of their normal duties, whether new or pre-existing, may have potential for commercialisation must notify this to the relevant Head of School, Director or equivalent and the Deputy Vice-Chancellor Research; the potential for commercialisation may be identified by a person other than a creator, who must also notify the relevant Head of School, Director or equivalent and the Deputy Vice-Chancellor Research.
30. The Head of School, Director or equivalent and the Deputy Vice-Chancellor Research is responsible for ensuring that the notification is forwarded as soon as possible to the University's Intellectual Property and Investment Advisory Committee.
31. Any intellectual property based wholly or partly on mātauranga Māori must be assessed by the Deputy Vice-Chancellor Māori or their nominee, who will advise the Intellectual Property and Investment Advisory Committee on the ownership, appropriate use and protection of mātauranga Māori, and any benefit sharing arrangement that is justified.
32. The Intellectual Property and Investment Advisory Committee will ensure that, as expeditiously as possible:
  - a. the feasibility and/or commercial potential of the invention or other intellectual property is established
  - b. the means by which the greatest benefit to the University (and by implication, all stakeholders) can be obtained from the relevant intellectual property is considered
  - c. full consideration is given to the possible mechanisms for delivering those benefits, e.g. publication, licensing, start-up company, open access innovation, return to the creator(s), etc.
  - d. the best intellectual property strategy to enable that delivery is determined
  - e. within that strategy, all relevant means of protecting that intellectual property are explored, for example, applications for patent or design protection, copyright, open source software licenses etc.
  - f. all stakeholders are kept fully informed of process and progress.
33. The brief of the Intellectual Property and Investment Advisory Committee is to maximise the benefits to all stakeholders, including the University, the creator(s), the creator(s) School/Division or equivalent, and external funders and other stakeholders, in a reasonable timeframe. The ability to seed further research from a successful outcome must be given full consideration. Any specific obligations associated with external funders must be given full consideration by the Committee.
34. If the University decides not to commercialise intellectual property, or fails to make progress with commercialisation within a time period determined by the Intellectual Property and Investment Advisory Committee, the intellectual property must be released back to the creator(s).

### **Allocation of revenue from the commercialisation of intellectual property**

35. The University will first recover the costs involved in protecting and commercialising intellectual property, and then direct the remaining revenue from successful commercialisation towards the creator(s) of the intellectual property, the support of further quality research in the relevant School/Division or equivalent, and the further development of appropriate quality infrastructure to effectively manage the commercialisation of future intellectual property.
36. Benefits from the commercialisation of intellectual property will normally be distributed (after deduction of protection and commercialisation costs) as follows:
  - one third of net revenue to the contributing creator(s) collectively
  - one third of net revenue to the School/Division or equivalent of the contributing creator(s) collectively, and
  - one third of net revenue to the University centre.

### **Disputes**

37. In the case of a dispute arising between the University and the creator(s) of intellectual property involving the ownership, allocation of revenue from, or management of intellectual property, the parties must refer the matter to the Intellectual Property and Investment Advisory Committee who will seek to resolve it.
38. If a satisfactory resolution of the dispute is unable to be arrived at by this means, a mediator will be appointed by the Arbitrators' and Mediators' Institute of New Zealand (AMINZ).
39. If a satisfactory resolution of the dispute is unable to be arrived at through mediation, an arbitrator will be appointed by (AMINZ; the decision of the arbitrator will be final and binding.

### **Waivers and variations**

40. Only the Senior Deputy Vice-Chancellor has authority to waive or vary the provisions of this policy in individual cases.

### **Responsibility for monitoring compliance**

41. The Senior Deputy Vice-Chancellor is responsible for monitoring compliance with this policy and reporting any breaches to the Vice-Chancellor.
42. Breaches of this policy by staff may result in disciplinary action under the [Staff Code of Conduct](#).
43. Breaches of this policy by students may result in disciplinary action under the [Student Discipline Regulations](#).