

## INTELLECTUAL PROPERTY RIGHTS POLICY

### 1. PURPOSE

The purpose of the policy is to clarify ownership of Intellectual Property (IP) created by those employed by or enrolled at AUT, or others using the University's Resources, and to establish principles for the commercialisation and allocation of benefits of commercialisation of IP arising from research and creative activities to parties holding an interest in that IP.

### 2. POLICY

IP created as a result of staff and or student research and creative activity must be dealt with in accordance with this policy. Commercialisation of IP must also follow the related Intellectual Property Commercialisation Procedures, which are aligned to this Policy.

#### 2.1 Ownership of Intellectual Property

2.1.1 The University owns and reserves all legal and beneficial rights in and to IP in Course Materials.

2.1.2 The University owns and reserves all legal and beneficial rights in and to IP created by  
(a) Staff, and Visitors in the Course of Duties or created using the University's Resources.  
(b) Students, as set down in Clause 2.1.5.

To avoid doubt, this clause does not affect the ownership of any person's pre-existing Intellectual Property that was not created in the Course of Duties or using the University's Resources.

The University reserves the right to commercialise such IP per Sections 2.2 and 2.3.

2.1.3 The University waives its entitlement to copyright in:

- (a) books, published papers, articles, films, sound recordings, artistic works (including those in digital media) created by Staff, Visitors or Students; and
- (b) any personal material and/or notes created outside the Course of Duties or without using University Resources, except for Course Materials and other specific works agreed to be owned by the University under a separate agreement or where significant resources of the University have been used to develop the copyright work.

2.1.4 A Student, or a staff member who is also a student, shall own the copyright in his or her thesis unless the Student agrees otherwise in writing.

2.1.5 Where a Student participates in a University Project group where other parties have a claim to a share of IP benefits, and/or his/her research otherwise uses significant University Resources or third-party resources, such as project funding or specifically funded laboratory equipment (see IP Commercialisation Procedures Clause 3.2.2 for detail), and that participation or research leads to the creation of Intellectual Property:

- (a) That IP will vest in the University or the applicable third party in accordance with this policy.
- (b) At the Student's or University's option, the University and the Student, and an external funding party if applicable, will enter into a separate agreement that will set out their rights and entitlements in respect of the IP and any potential Net Revenue that may be derived from the IP.
- (c) The Student and University will each take steps as are reasonable in the circumstances to ensure that:
  - (i) The academic progress of the Student is not hindered by the provisions of this policy
  - (ii) The examination of any thesis is not affected by this policy.

Student IP ownership, where the IP is created without the support of significant University Resources, otherwise remains with the student.

- 2.1.6 Without limiting Students' rights under clause 2.1.5(c), at the request of the University, Students, Staff and Visitors will agree to embargo or otherwise delay the publication or release of any thesis, paper, presentation or other material for up to two years where that publication or release may prejudice the ability to patent, or otherwise protect, any IP or would otherwise prejudice the Commercialisation of any IP.

## 2.2 Commercialisation of IP

- 2.2.1 The University owns and asserts Commercialisation rights over all IP created as a result of research and creative activity of staff in the course of duties, and of students whose creative activities are supported with University or external resources (other than library access and prescribed teaching materials) as covered by Clause 2.1.5.
- 2.2.2 All Commercialisation of IP by AUT will be assigned to AUT Ventures Limited, unless otherwise instructed by the Vice Chancellor.
- 2.2.3 Commercialisation of IP by AUT Ventures Ltd may be through direct sale (for cash and/or shares in an external company), licensing for royalties, creation of a spin-out company, or a combination of these. AUT Ventures Ltd will normally allocate shareholdings in spin-out companies to staff and students at an early stage of the Commercialisation process when only nominal value may be attached to the shares.
- 2.2.4 Staff of the University, and students whose research or creative work is covered by Clause 2.1.5, must disclose to AUT Ventures Ltd IP arising from research or creative work where a Commercialisation opportunity may exist.
- 2.2.5 AUT Ventures Ltd will take reasonable steps to protect the rights of the individual, the University and any sponsoring entity, to fairly allocate the net benefits of IP that is successfully commercialised to all parties with an interest, and to share, with interested parties, benefits

from Commercialisation in accordance with this Policy and related Commercialisation Procedures.

- 2.2.6 AUT Ventures Ltd will prioritise projects for Commercialisation. In the event that AUT Ventures Ltd does not choose to pursue a Commercialisation opportunity within a period of 90 days after disclosure, rights to the IP pass, in the first instance, back to the researchers/creators of the IP. Further development of the IP may result in its uptake for Commercialisation once again by AUT Ventures Ltd, under the terms of this policy and AUT's Commercialisation procedures.
- 2.2.7 Where AUT Ventures Ltd chooses not to commercialise the IP created by Staff, Students and/or Visitors under Clause 2.1.2, it shall inform the Creator(s) of that decision in writing and will, if requested by the Creator(s), assign the IP to the Creator(s), or may, with the agreement of the Creator(s), make the IP available for commercial development by an industry partner on terms to be agreed between the University, the Creator(s) and the industry partner.
- 2.2.8 Creator(s) who take up an assignment of such IP will be free to exploit that IP as they may see fit. Should the Creator(s), make further improvements to the IP using University Resources, the University may choose to re-assert its IP ownership and its right to commercialise the IP at a later date. In certain circumstances the University may, while retaining IP ownership, refer the IP back to the Creator(s) for further technical development and retain the rights to commercialise it subsequently. Further detail on this is included in the Commercialisation Procedures.
- 2.2.9 All Commercialisation of IP by AUT Ventures Ltd must be subject to a contractual agreement on sharing of financial benefits between the University and the researcher(s)/inventor(s), and with external business or investor parties where applicable.
- 2.2.10 The University may choose to reinvest a portion of Commercialisation benefits in further business development and Commercialisation opportunities within AUT Ventures Ltd.
- 2.2.11 Commercialisation activities should not create any conflict of interest for staff and students and these activities are subject to the University's Conflict of Interest Policy.

## **2.3 The Distribution of Benefits from Commercialisation**

- 2.3.1 In principle, AUT Ventures Ltd will operate a flexible commercialisation strategy that aims to maximise deal flow and knowledge transfer, but delivers strong financial returns to the University, its staff and students.
- 2.3.2 AUT Ventures Ltd will, at its discretion, recover net cash Commercialisation Costs, in particular, costs of IP protection, legal costs, consultant costs, travel costs, prototype design

and development costs, from the Gross Revenue before distributing this revenue to entitled parties.

- 2.3.3 The University will return a proportion of net financial benefits, from Commercialisation of IP owned by the University, to staff and/or students who have rights in relation to the IP under Commercialisation, and to the researcher's or inventor's department or school. Such benefits will be diluted to an extent determined by the proportion of benefits that may pass to an external party or parties who have invested resources into the Commercialisation process.
- 2.3.4 The distribution of Net Revenue from Commercialisation will be in accordance with the specific Share of Benefits agreement negotiated on a project by project basis which recognises the extent to which the project has been supported by University Resources, and specifically by AUT Ventures Ltd. AUT Ventures Ltd will normally retain for reinvestment, from the University's share of benefits, 6% of the total net revenues that are received by the University and the IP creators.
- 2.3.5 Where a Share of Benefits agreement does not exist, the parties shall agree on respective shares of benefits. If there is a failure to agree the matter shall be referred for mediation, and if this fails shall be dealt with under the New Zealand Arbitration Act 1996 in accordance with the AUT Commercialisation Procedures.
- 2.3.6 Cessation of Employment: When a Creator entitled to Net Revenue under clause 2.3.2 leaves the University, retires, or dies while employed or enrolled at the University, then payment of that Creator's share of Net Revenue will continue to the Creator or his/her estate indefinitely, or until such benefits cease to flow from the Commercialised IP. It is the responsibility of Creators of IP to ensure that the University is informed of their contact details to enable the University to make any payments due under this policy.

### 3. DEFINITIONS

For the purposes of this policy, the laws of New Zealand apply.

**AUT Ventures Limited** means the Commercialisation company, that was established and is operated by the University for the purposes of Commercialisation, and includes any successor Commercialisation company established by the University for that purpose.

**Commercialisation** means, in relation to any Intellectual Property means to make, sell, copy, adapt, apply, publish, develop, use, assign, license or otherwise utilise Intellectual Property for the purpose of generating financial or other commercial gains, specifically:

- The transfer of that Intellectual Property to the commercial sector with the aim of generating financial benefit for the University, its staff and/or its students. This may involve direct sale, licensing for royalty or the creation of a start-up company; and/or
- The manufacture, distribution, sale and/or provision of goods or services using that Intellectual Property.

For the purposes of this policy this definition shall exclude (without limitation):

- Activities related to enrolment of, or provision of any paper, course, subject or unit to, students at the University and revenue from Commercialisation does not include fees paid by students enrolled in any paper, course, subject or unit at the University; or
- Any research undertaken, or material otherwise created, by the University using any Intellectual Property under a commission or fee for services arrangement with a third party and revenue from Commercialisation does not include any fees or other amounts received by the University for any such commission or fee for service arrangement.

In some cases, commercialisation may be carried out for the public good without a direct financial return to the University. **Commercialised** has a corresponding meaning.

**Commercialisation Costs** means, in relation to any Commercialised Intellectual Property, the following costs and expenses incurred by the University and/or AUT Ventures Ltd in relation to the protection, enforcement, defence and Commercialisation of that Intellectual Property, including:

- Patent, design or similar IP protection and enforcement costs.
- Other legal costs.
- External consultant costs of preparation of due diligence reports, including technical, market and commercial validation, IP searches, FTO, preliminary business plans or market research if specifically undertaken by AUT Ventures Ltd with the agreement of the inventor(s) and not funded by investors; and
- Monies expended by AUT Ventures Ltd on areas such as design, prototyping, clinical trials, beta testing of products with test clients.
- Costs for AUT Ventures Ltd staff time and travel.
- Costs of correspondence.
- Advertising and publicity costs.

Commercialisation Costs will include a 10% margin on all the foregoing costs to be recovered by AUT Ventures Ltd.

**Copyright Work** means any work that falls within one or more category of protected work under the New Zealand Copyright Act 1994 (or any similar protection anywhere else in the world) including, but not limited to artistic, literary, dramatic, or musical works, sound recordings, cinematograph films, television broadcasts, sound broadcast, published editions of a work, photographs, video recordings, CD ROMs or software in both object code and source code form. For the purposes of this policy, Copyright Work shall also include monographs and scholarly works including, but not limited to, manuscripts, lecture notes and other materials prepared for educational or scholarly purposes.

**Course Materials** means:

- Any Copyright Work in any form and any media and any other material created by Staff member for use in, or in connection with a paper, course, subject or unit offered, or to be offered by the University or by an affiliated open learning or distance education agency.
- Any Copyright Work in any form and any media and any other material commissioned by the University specifically for use in, or in connection with a paper, course, subject or unit offered or to be offered by the University or by an affiliated open learning or distance education agency, unless there is an agreement to the contrary.

**Course of Duties** means the scope of duties as set out in the terms of an employee's employment contract, collective contract, bargaining agreement, duty statement, position description, University Project description or any other agreement between the Staff, Student and/or Visitor (or Visitor's Organisation) and the University in effect at the time at which the Intellectual Property is created.

**Course Resources** means resources that are available to, or used by, Students enrolled in any paper, course, subject or unit that are directly attributable to the fees paid by Students for that paper, course subject or unit. For the avoidance of doubt, Course Resources do not include resources that are available to Students as a result of their involvement in a University Project, where the Student has received financial support from the University or a third party for those resources, or any other resources identified by the University from time to time as falling outside the scope of Course Resources.

**Creative activity:** for the purposes of this policy may be research as defined above or any creative or inventive work that leads to intellectual property that may the potential to be commercialised.

**Creator:** means the person who creates, invents or develops, or contributes to the creation, or is responsible for the creation or invention, whether or not in conjunction with another person, of an Intellectual Property.

**Intellectual Property** means all intellectual property rights and interests whether conferred by statute, common law or in equity including, but not limited to all rights and interests in any Copyright Works, inventions (including patents and patent applications), registered and unregistered designs, registered and unregistered trademarks, trade names, domain names, know-how trade secrets and confidential information, and all rights or forms of protection of a similar nature including common law rights and interests.

**Net Revenue** means, in relation to a particular item or related items of Intellectual Property, the revenue received by the University or AUT Ventures Ltd from the commercialisation of the Intellectual Property after the discretionary deduction Commercialisation Costs from the University share of financial benefits.

**Research:** is the TEC Performance Based Research Fund (PBRF) definition of Research, which is intended to be a broad characterisation that includes original investigation in all domains, including that of a creative, professional or applied nature. The PBRF Quality Evaluation explicitly recognises that high-quality research is not restricted to theoretical inquiry alone but occurs across the full spectrum of original investigative activity.

## PBRF Definition of Research

*For the purposes of the PBRF, research is original, independent investigation undertaken to contribute to knowledge and understanding and, in the case of some disciplines, cultural innovation or aesthetic refinement.<sup>1</sup>*

*Research typically involves inquiry of an experimental or critical nature driven by hypotheses or intellectual positions capable of rigorous assessment by experts in a given discipline.*

*Research includes work of direct relevance to the specific needs of iwi, communities, government, industry and commerce. In some disciplines, research may be embodied in the form of artistic works, performances or designs that lead to new or substantially improved insights. Research may include:*

- *Contributions to the intellectual underpinning of subjects and disciplines (for example, dictionaries and scholarly editions)<sup>2</sup>*
- *The use of existing knowledge in experimental development to produce new or substantially improved, materials, devices, products, communications or processes*
- *The synthesis and analysis of previous research to the extent that it is new and creative.*

*Research findings must be open to scrutiny or formal evaluation by experts within the field. This may be achieved through various forms of dissemination including, but not limited to, publication, manufacture, construction, public presentation, or provision of confidential reports.*

*Activities that are part of routine standard practice and do not embody original research are excluded, such as:*

- *Routine testing*
- *Data collection*
- *Preparation for teaching*
- *The legal and administrative aspects of intellectual property protection and commercialisation activities.*

1. *The term 'independent' does not exclude collaborative work.*
2. *The term 'scholarly' is defined as the creation, development and maintenance of the intellectual infrastructure of subjects and disciplines, in forms such as dictionaries, scholarly editions, catalogues and contributions to major research databases.]*

In addition, for the purposes of this Policy, the following activities are not Research:

- The provision of advice or opinion, except where it is consistent with the definition of research
- Clinical trials, except where they are consistent with the definition of research
- Scientific and technical information services
- Feasibility studies (except into research and experimental development projects)
- Specialised routine medical care
- Routine computer programming, systems work or software maintenance
- Any other routine professional practice (e.g. in arts, law, architecture or business).

**Staff** means anyone who is at the relevant time employed by the University under either individual employment contracts or a collective employment contract. **Staff Member** has a corresponding meaning.

**Student** means a person who is at the relevant time enrolled as a student at the University.

**Supervisor** means the supervisor of a postgraduate research Student or person acting with the authority of the University in such a capacity or the Staff Member supervising an undergraduate Student or postgraduate Student or coursework Student in a course of studies.

**University or AUT:** means the Auckland University of Technology.

**University Project** means a programme of work or research administered by or on behalf of the University and includes, but is not limited to supervised research courses and externally funded projects, but excludes ordinary lecture-based courses.

**University Resources** means money, services, brands, or property owned, provided or obtained by the University including but not limited to:

- Funds obtained by or through the University
- Physical infrastructure, computers, library books, laboratory or other equipment, supervisory support of staff for student activities.
- Express or implied association with the University's name or brand, including use of the AUT letter-head.
- Technical, administrative, financial and human resources staff time for activity carried out during contracted working hours.
- Paid leave
- Pre-existing intellectual property rights vested in the University for students, this shall exclude Course Resources.

**Visitor** means a person who at the relevant time is a visiting staff member or adjunct staff member and who is not an employee of the University including, by way of example, those on sabbatical and other forms of research and study leave at the University.

**Visitor Organisation** means, where applicable, the university, research organisation or other entity that employs a Visitor and, with which, the University may have entered an agreement regarding that Visitor's sabbatical or other form of research and study leave at the University.



#### 4. SCOPE

This policy applies to:

- Staff, Students, Visitors and anyone contracted to or performing services for the University; and
- All Intellectual Property created by anyone in the Course of Duties or using the University's Resources and all Intellectual Property otherwise created under the auspices of the University irrespective of the media in which that Intellectual Property exists.

To the extent they are inconsistent, any contracts between the University and any party will take precedence over this policy, provided that, any contract or arrangement between the University and any Staff Member, Student, Visitor or Visitor Organisation will be deemed to incorporate, and be consistent with, the terms of this policy to the greatest extent possible.

#### 5. RELEVANT LEGISLATION:

All legislation and common law relating to Intellectual Property

[Public Finance Act 1989](#)

[Copyright Act 1994](#)

[Patents Act 1953](#)

[Designs Act 1953](#)

[Trademarks Act 2002](#)

[Plant Variety Rights Act 1987](#)

[Illegal Contracts Act 1970](#)

[Contracts \(Privity\) Act 1982](#)

#### 6. LEGAL COMPLIANCE:

Contractual obligations to external parties in relation to commercialisation activities, including compliance with acts relating to contracts.

Record keeping and reporting obligations under the Crown Entities Act 2004 and related acts. Financial management and reporting obligations under the Crown Entities Act 2004 and related acts.

## 7. RELATED PROCEDURES/DOCUMENTS

Research and Consultancy Contracts Policy

Intellectual Property Commercialisation Procedures

Research and Consultancy Contract Procedures

Contracts Policy

Outside Activities and Supplementary Earnings Policy

Conflict of Interest Policy

Risk Management Policy Financial

Authorisations Policy Financial

Accounting Policy

**Note:** [Policies and Procedures](#) can be found on Tuia.

### 1. RESPONSIBILITY

8. The University, Staff, Students and Visitors will each do all things as are reasonably necessary to give effect to this policy according to its true intent including, by way of example but without limitation, signing any assignments required to give effect to the Intellectual Property ownership that this policy records.
9. Staff and students will refer to the Intellectual Property Commercialisation Procedures for detailed information on commercialisation procedures and the allocation of net financial benefits from commercialisation activities.
10. Direct responsibility for the operation of the policy lies with the Pro Vice Chancellor Research and Innovation.

### 2. DOCUMENT MANAGEMENT AND CONTROL

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