

INTELLECTUAL PROPERTY RULE 2010

(With debt to the University of Sydney (Intellectual Property) Rule 2002 as amended 8 December 2006)

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Part 1: Definitions and Interpretation

1 Definitions

College means the Sydney College of Divinity

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

computer program has the meaning ascribed to it by Section 10 of the *Copyright Act* (1968) (Commonwealth);

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

course means any program of study, in whole or part, conducted by or on behalf of the College to any student;

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 noncommercial purposes including, without limitation, to apply, publish, exhibit, transmit, enhance, use, assign, license, sub-license, franchise, adapt or modify intellectual property;

intellectual property means:

- a. Any propriety right which arises under, or is capable of being obtained under, legislation relating to copyright patents, designs, trademarks and
- b. Any common law intellectual property, including know-how, trade secrets and confidential information

And means and includes such rights to the extent that they are added to or varied from time to time by amendments to relevant legislation.

Member Institution means an approved Member Institution of the Sydney College of Divinity

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 recognizes 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 or her honour or reputation - known as the right of integrity of authorship of a work;

originator means a staff member or any other person co-opted for service of the College, 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 anything 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 13 or by a student under Rule 14;

staff member means a person who is a member of either the staff of the Office of the Dean of the College or a member of the academic or non-academic staff (whether full-time, part-time or casual) of a Member Institution of the College at the time he or she creates any intellectual property;

student means a person who is enrolled as a student of the College 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 a Member Institution of the College or in the Office of the Dean, (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 College 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 College 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 College or Member Institution of the College (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 College or Member Institution 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

- (i) In this Rule, a reference to any law includes any amendment or replacement of it.
- (ii) This Rule is to be read and interpreted in conjunction with
 - a. the SCD Staff and Student Codes of Conduct as amended from time to time.
 - b. the Memorandum of Understanding Affecting the Sydney College of Divinity and its Member Institutions to Teach the Academic Awards of the SCD dated 18 March 2010, as amended from time to time.

Part 2: Date

- 3 The policy surpasses any agreement prior to January 2008 and affects all intellectual property consequent to December 2007.

Part 3: Ownership of intellectual property created by both of the College and the Member Institution

4 College asserts ownership

- (i) The Sydney College of Divinity (*College*), assumes ownership of all such material generated at the service of its administration, including such working material developed by the SCD Council, Academic Board, Committees and Office
- (ii) The College as the accredited Higher Education Provider, has ownership of the Awards and their Curricula, accredited by the NSW Director General of Education, and as described and contained in the SCD Manuals and in all those submissions to the accrediting authorities.
- (iii) 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 externally funded research agency will vest in the College.
- (iv) In respect to (i), (ii), and (iii) this is regardless of the manner in which the College might choose to disseminate, license or sell the material.

5 Member Institution asserts ownership

- (i) The Member Institution asserts, at its determination, ownership of all intellectual property created by a staff member in pursuance of the terms of his or her employment, including
 - a. teaching material generated at the service of the conduct of the Awards of the College
 - b. that material not directly related to the provision of the Awards of the College but in regard to the mission of the Member Institution, or by any individual working at the service of the Member Institution including, without limitation, copyright in any material that is created at the express request or direction or at the service of the conduct of the Member Institution's mission not directly related to the provision and conduct of the College's Awards.

6 Exceptions to Rule 4 and 5

- (i) Neither the College nor the Member Institution assert copyright ownership over any work created by a staff member, or by any individual working at the service of the College or the Member Institution, 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*"), even when used as teaching material, but subject to the conditions that the College or the Member Institution reserve the right to list the material in its self-promotion.

- (ii) The College retains a non-exclusive, royalty free, perpetual licence to use that exempt intellectual property anywhere in the world and in any manner the College thinks fit, subject to any obligation that the College may have relating to any moral right subsisting in that work.
- (iii) If the College or the Member Institution exercises its rights then the originator is entitled to a share of any commercial benefit.

7 Sharing commercial benefits

Subject to Rule 4 and 5, staff members, or individuals working at the service of either the College or the Member Institution, who create intellectual property over which either the College or the Member Institution asserts ownership under Rule 4 and 5 are entitled to a share of any commercial benefits that either the College or the Member Institution receive from developing it

Part 4: Intellectual property created by students

8 Ownership

- (i) Neither the College nor the Member Institution 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

9 Assignment

- (i) A student cannot be required by the College or the Member Institution 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.
- (ii) Subject to the provisions of any prior agreement between the student and either the College or the Member Institution, where a student creates intellectual property jointly with a staff member or a visitor, the Member Institution will negotiate with that student in connection with the development of that intellectual property.
- (iii) If a student wishes to participate in any third party activity or in any activity that has created, or may in future create, intellectual property that may be the subject of development within the terms of a specific project ("*activity*") then, before that student is permitted to begin that activity, The College or the Member Institution may, as a condition of the student participating in that activity, require the student to:

- a. assign his or her intellectual property; and
 - b. 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
- (iv) It is the responsibility of the person who is in charge of that activity (for example, the chief researcher) and the student's supervisor,
- a. to notify the student about all requirements for participating in that activity
 - b. The 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 College or the Member Institution, depending on what is reasonable under the circumstances including taking into account any obligation that third parties may have in respect of that activity.

Part 5: Ownership of intellectual property created by visitors

10 Requirement of confidentiality and assignment

- (i) As a condition of any visitor:
- a. having access to and use of any of the College or Member Institution's facilities, equipment or accommodation;
 - b. having access to and use of any intellectual property of the College or Member Institution; or
 - c. or participating in any teaching or research activities of the Institution (including any third party activity), ("*visitor privileges*"),

the College or the Member Institution may require that visitor to observe the custom of confidentiality pertinent to the College or Member Institution.

11 Assumption

- (i) Unless and until either the College or the Member Institution gives a visitor notice a visitor is entitled to assume that the College or the Member Institution
- a. makes no claim in respect of any intellectual property
 - b. 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 of the College's or Member Institution's facilities or intellectual property of the Institution.

Part 6: Reporting and Developing Intellectual Property

12. Staff Responsibilities

The Staff Code of Conduct, as amended from time to time, makes it clear that staff members have responsibilities in relation to intellectual property protection including, where appropriate, the maintenance of research records and the prevention of premature public disclosure of research results prior to obtaining intellectual property protection.

13 Reporting by staff members

- (i) Staff members who believe they have created any intellectual property for which the College or Member Institution asserts ownership pursuant to Rules 4 and 5 must as soon as possible after its creation:
 - a. report that fact to their Principal and to the Dean of the College as appropriate, and
 - b. provide full details of the intellectual property created and the names of the originators in a form prescribed by the Office of the Dean from time to time.
- (ii) Staff members who create exempt intellectual property within the meaning of Rule 7 must provide a copy of the thing to which that intellectual property relates to either the Dean of the College or the Principal of the Member Institution, as appropriate, within 90 days of its creation or modification.
- (iii) In the event that either the Dean of the College or the Principal of the Member Institution consider that the intellectual property reported is intellectual property over which either the College or the Member Institution asserts ownership then either the Dean of the College or the Principal will
 - a. notify both the staff member 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 enable assessment of the value of the intellectual property.
- (iv) If notice is so given the College or the Member Institution has 8 weeks from the time either the Dean of the College or the Principal of the Member Institution receive full details of intellectual property reported under Rule 14(i)(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 14(i).
- (v) Until either the College or the Member Institution make a decision under Rule 14(iv), the staff member who gives notice under Rule 14(i) must take all reasonable steps to protect the reported intellectual property. The College or the Member Institution encourages staff members to seek advice from the Dean of the College or the Principal of the Member Institution, as appropriate, on how best to do so.

14 Dealing with reported intellectual property

- (i) If the College or the Member Institution:
 - 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.
- (ii) Nothing in Rule 13(i)) prejudices any right of either the College or the Member Institution to:
 - a. claim a share in any commercial benefit received; or
 - b. recover any establishment costs or continuing costs already incurred by either the College or the Member Institution, because of any subsequent development of reported intellectual property, unless that right is expressly waived by either the Dean of the College or the Principal of the Member Institution in writing.

- c. If either the College or the Member Institution decides that it wishes to protect or develop reported intellectual property, then either the Dean of the College or the Principal of the Member Institution must notify:
 - 1. the staff member concerned; and
 - 2. that staff member's Principal if the decision is made by the Dean of the College
- d. If the Institution 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
 - 1. negotiations will be undertaken on a case-by-case basis, according to the relevant circumstances; and
 - 2. the College or the Member Institution shall make any decisions arising from those negotiations which shall be binding on the originator.

Part 7: Dispute resolution

15 Procedure

- (i) If an originator has any concerns about the manner in which this Rule is interpreted or applied (*dispute*), then the person may notify
 - a. any other originators
 - b. the Dean of the College or the Principal of the Member Institution in respect to Rules 4 and 5
- (ii) The Dean of the College or the Principal of the Member Institution, as appropriate to either Rule 4 or 5, must, within 14 days of receiving a notice under Rule 15 convene a meeting between all persons notified of a dispute in order to try and resolve that dispute.
- (iii) If a meeting is not convened until Rule 15 within the specified deadline or a meeting is convened under Rule 15 but the dispute is not resolved within 14 days of convening it, then the party who gave notice under Rule 15 must notify either the Chair of the SCD Council or the Chair of the Member Institution's Board of Governance, as appropriate to Rules 4 and 5, to that effect, giving full details of the dispute (including any attempts to resolve it).
- (iv) The Chair of the SCD Council or the Chair of the Member Institution's Board of Governance, as appropriate to Rules 4 and 5, must consider any dispute referred to him or her and determine that dispute within 31 days of it being so referred. The determination of the Chair of the SCD Council or the Chair of the Member Institution's Board of Governance is final and binding on all parties to the dispute.

Part 8: Miscellaneous

16 Review Committee

There shall be an Intellectual Property Committee of the College comprising

- a. The Chair of the College Council
- b. The Dean of the College
- c. The Chair of the Academic Board of the College
- d. One academic staff member nominated by the Dean of the College.

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 of the Council of the College

The Committee should meet at least annually, but may meet more frequently if required by the Chair of the College Council.

17 Particular Agreements with Member Institutions in Respect to this Policy

In respect to this policy, the College, at the direction of its Council, reserves the right to enter into those arrangements with its Member Institutions that might be of service of the fulfillment of their own distinctive mission.