



Intellectual Property Policy

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Related Documents:	Academic Freedom Policy Recruitment, Selection and Appointment Policy	
Responsible Officer:	Registrar	
Review:	Academic Quality Assurance Committee	

Any person who requires assistance in understanding any aspect of this document should contact the Responsible Officer

1. Overview

Tabor seeks to encourage quality teaching, learning and research. It believes that knowledge and understanding should generally be made available in the public domain for the benefit of the whole community. In instances where this principle conflicts with commercial considerations the College will endeavour to resolve the conflict so that publication may occur without undue delay, having regard to the circumstances and the wishes of those concerned.

In order to protect the integrity and accreditation status of its courses and thus to assure students and TEQSA that it is able to deliver its courses, the College retains ownership of and intellectual property rights over all course materials including those created or originating with staff members in the course of their employment or as an outcome of a contractual arrangement.

The College respects and seeks to protect the moral rights of the owners of intellectual property and recognises their right to participate in commercialisation activities.

The College will seek to facilitate, where appropriate, the commercialisation of intellectual property created by staff and students of the College.

Tabor will, where appropriate, make its intellectual property available under a Creative Commons licence that allows for the re-use of the College's material with appropriate acknowledgement. (See <http://creativecommons.org.au/>)

2. Scope

This framework is designed to assist all Tabor staff and students in matters relating to intellectual property throughout the College.

3. Policy Principals

- 3.1. The college acknowledges that the [Copyright Amendment \(Moral Rights\) Act, 2000](#) protects the right of an author or artist to be identified with his or her works (the right of attribution); and the right to object to alteration or other derogatory treatment of the work that would be prejudicial to the author or artist's honour or reputation (right of integrity) (see summary of [Copyright Regulations](#))
- 3.2. Intellectual property is created by academic staff, by general staff, and by students, and there are times that either because of employment contracts or some other third party arrangement the ownership of this intellectual property may be vested in or shared with the College. Please refer to **Types of Intellectual Property** and **Determining Ownership and Rights to Intellectual Property** for additional information.
- 3.3. In general, the College owns copyright in teaching materials that are produced by its staff in the course of their employment. Please refer to **Determining Ownership and Rights to Intellectual Property** for additional information.

4. Procedures

- 4.1. Where an originator creates intellectual property, which he/she believes may be capable of commercial use he/she must inform the Director of Research. The Director of Research will decide in consultation with the originator and other relevant parties whether or not the College wishes to become involved in the commercialisation process and will inform the originator within 10 weeks.
- 4.2. Where the intellectual property is affected by legal arrangements with a research funding body or other third party the Director of Research will determine the action to be taken with regard to commercialisation.
- 4.3. Distribution of financial returns
 - 4.3.1. The administrative, marketing and other costs related to commercialising an item of intellectual property will be a first charge against any financial returns.
 - 4.3.2. Where the annual net financial return from the commercialisation of intellectual property is under \$10,000 the originator is entitled to receive all the financial return. For returns of over \$10,000 the originator is entitled to 60% of the return and the remainder is to be divided equally between the originator's Faculty / Department and the College. Where there is more than one originator, the originators should decide how their component will be distributed.
 - 4.3.3. The originator may use the net revenues he or she receives for:
 - College purposes; and/or
 - Personal remuneration, in which case, income tax will be deducted.
 - 4.3.4. Where joint originators are unable to reach agreement, the funds concerned will be held in trust by the College until a legal basis for payment to the originators exists. Funds so held in trust will, after five years, be disbursed among the originators in such manner as the Tabor Executive Council may determine.
- 4.4. Responsibilities of originators of intellectual property
 - 4.4.1. Where the college decides to commercialise an item of intellectual property the originator is required to provide reasonable assistance in this process.

4.5. Obligations to Third Parties

4.5.1. Where the College has contracted with another party to undertake a research project or other activity which may lead to the creation of intellectual property, and where the agreement between the College and that party deals with the ownership of intellectual property, ownership of intellectual property will be governed by that agreement.

4.5.1.1. Except in the situation where a Research Student has been contracted to participate in a research project, in which case the “obligations to third parties” applies, the intellectual property created by a student belongs to the student even if part or all of the work has been submitted to the College as part of an assessment obligation. For full details, see **Determining Ownership and Rights to Intellectual Property**.

4.5.2. The College will seek to ensure that, as far as practicable, the terms of agreements with third parties are consistent with the principles set out in this policy.

4.5.3. If staff members of the College are seconded to another party to undertake a research project or other activity which may lead to the creation of intellectual property, the secondment will require an agreement between the College and that party prior to the approval of the secondment by the College.

4.6. Moral rights

4.6.1. The College will take reasonable steps to ensure that an originator’s right to recognition as the creator of a work is respected, including the originator’s right to be known as the creator of the work, to prevent others from claiming to be the originator of the work, to prevent the false attribution of works to the originator, and to prevent attribution to the originator of unauthorised altered versions of a work (these four sub-rights are incorporated in the right of attribution).

4.6.2. The College will take reasonable steps to ensure that when it uses intellectual property created by an originator it consults with the originator before modifying or adapting that material, except in the case of teaching materials. Further to this, please note that the College has three licences in place as follows:

4.6.2.1. Copyright Agency Ltd - Education Licence (non-commercial)

4.6.2.2. Christian Copyright Licensing International Pty Ltd – Church Copyright License

4.6.2.3. Screenrights – Broadcasting and communicating copies of Broadcasts for education purposes Licence

4.6.3. The College will take reasonable steps to ensure that an originator's right not to be acknowledged as the creator of intellectual property which has been modified or adapted is recognised.

4.7. Disputes

4.7.1. If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy depends, the Intellectual Property Officer may appoint a mediator who can assist the parties in resolving their dispute.

4.7.2. If such a dispute cannot be resolved through the assistance of a mediator, the Intellectual Property Office will refer the dispute to the Executive which may appoint an arbitrator to investigate and decide the matters in dispute. The arbitrator may adopt whatever procedure he or she sees fit, provided each party is given a fair hearing.

4.7.3. In selecting a mediator or arbitrator, the Intellectual Property Office must, as far as is reasonably practicable, choose a person who is acceptable to all parties.

4.8. Director of Research

4.8.1. The role of Director of Research a requirement to provide advice on intellectual property matters and to take responsibility for decisions regarding the commercialisation of intellectual property created by staff or students of the College.

5. Definitions

“Course Materials” means all of the materials to be provided for or used in the provision and delivery of Tabor’s accredited courses including, but not limited to, course guides, teaching manuals, student manuals and materials, lecture content, assessment tasks, specification of learning content and learning outcomes, course structures and course organisational details, all other documents (including any approved translations), manuals, files, information, data, computer programs, computer disks and records of any kind stored by any means.

See [Global Definitions](#)

6. Communication and Training

- 6.1. Deans of Faculties / Departments will ensure that this policy (and any subsequent amendments) is provided to all staff and brought to the attention of students.

Appendix A – TYPES OF INTELLECTUAL PROPERTY

Type	Description	Relevant Laws
Patents	Deal with inventions entailing new or improved products, processes or technology.	Patents Act 1990
Trade marks	Cover words, symbols, sounds, smells or a combination of these that are used to distinguish the goods and services of one trader from those of another.	Trade Marks Act 1995
Designs	Designs for the configuration, ornamentation, pattern, shape or appearance of manufactured goods.	Designs Act 2003
Copyright*	Copyright for original material in literary, artistic, dramatic or musical works, films, broadcasts, multimedia, computer programs and databases.	Copyright Act 1968
Crown Copyright	The State is the owner of the Copyright in certain original works made by, or first published by, or under the direction or control of, the State	Copyright Act 1968
Moral right	<p>A right of attribution of authorship, a right not to have authorship falsely attributed or a right of integrity of authorship.</p> <p>A moral right applies to copyright works, with the exclusion of sound recordings, TV/sound broadcasts and published editions.</p> <p>Is personal to the creator, unassignable, cannot be bought, sold or licensed, is not-economic and cannot be directly exploited for financial gain. It is a right conferred only on individuals not on the State, corporation or other entities.</p>	Copyright Act 1968
Plant breeder's rights	A particular form of patent for new plant varieties.	Plant Breeder's Rights Act 1994
Circuit layout rights	Circuit layout rights for the configuration of electronic circuits in integrated circuit products or layout designs. The Act provides automatic protection.	Circuit Layouts Act 1989
Confidential Information	Secret information in whatever form may include trade secrets, in-house "know-how", financial and market information, customer lists	

***Copyright:**

- Is the most common form of IP owned or used
- Protection for most works exists for 70 years from the end of the year of the date of first publication (50 years if this is prior to 01/01/2005). The type and extent of the rights may differ according to the nature of the copyright material and the circumstances of its creation and use
- Owners have exclusive rights to deal with their works in certain ways and (subject to some exceptions) to prevent others from doing so. Generally owners have the exclusive right to:
 - Reproduce, publish, publicly perform or communicate (including via electronic transmission) and adapt literary dramatic and musical works
 - Reproduce, publish and publicly communicate artistic works
 - Copy cinematographic films and sound recordings and to publicly communicate and cause these to be seen or heard in public
 - Make a film of a television broadcast, make a sound recording of a sound broadcast, and re-broadcast or communicate to the public by means other than broadcast
- Protects the form or way in which an original idea or information is expressed, not the idea or information itself. Therefore a copyright owner cannot prevent the independent creation by another person of a similar work.

Appendix B - DETERMINING OWNERSHIP AND RIGHTS TO INTELLECTUAL PROPERTY

Ownership of intellectual property generally entails:

- Exclusive rights to use the property, including the right to publish, copy or adapt the material
- The right to sell, transfer, donate, grant licences or permissions to use intellectual property, or use the intellectual property as security for loans
- Entitlement to registration, where applicable
- Standing to seek protection of exclusive intellectual property rights before a court of law
- The exclusive right to control and direct development and commercialisation of the intellectual property
- Liabilities of any kind associated with the ownership of property

1. Identifying ownership of intellectual property

- 1.1. Creation of the material is useful in determining ownership of intellectual property, but is subject to claims arising under employment contracts and other agreements, including agreements related to registration.
- 1.2. As a general rule, where work is produced by an employee in the course of his/her employment, then the employer is the copyright owner
- 1.3. For published editions, the publisher is the copyright owner.
- 1.4. Factors to be considered in the College's decisions about intellectual property:
 - Intellectual property created in the course of employment
 - Substantial use of College resources and/or services in the creation of intellectual property
 - Use of pre-existing intellectual property of the College
 - Management of intellectual property in the best interests of a number of staff and/or students who generated it
 - Use of college funds or funding obtained by the College
- 1.5. The College reserves the right to require staff to enter into separate contracts in specific situations.

2. Intellectual property created by academic staff:

- 2.1. It is not always easy to decide whether an activity that produces intellectual property comes within the terms of the employment contract.
- 2.2. It is often difficult to decide whether the property is produced in the employer's time or the staff member's own time.
- 2.3. Academic staff may use premises, resources and services other than those of the College to generate intellectual property.
- 2.4. Academic staff are professionals who are expected to increase their own expertise and some intellectual property may be "know how" belonging to them rather than to the College.
- 2.5. Intellectual property may be produced by a team of academics, students, technical staff, etc.
- 2.6. Academic staff members are interested in the integrity of the academic property they generate and its role in their own careers.

3. Intellectual property created by students

- 3.1. The College acknowledges that in law, ownership of intellectual property developed by a student in the course of his or her studies at the College vests in the originator on creation. The College therefore makes no claim to ownership of intellectual property developed by a student except where a student has developed the intellectual property directly in the course of working as a staff member of the College, in which case the provisions of this Policy relating to staff will apply.
- 3.2. The College may require students who will be undertaking research work with, or under the supervision of, staff in an investigative or creative activity to enter into an agreement, prior to commencement of that activity, to assign intellectual property rights to the College upon request.

- 3.3. The College will require students to assign intellectual property rights only in situations where there is a significant contribution to the development of that intellectual property by a staff member or where the College has pre-existing ownership of related intellectual property.
 - 3.4. A student who has assigned intellectual property rights to the College will be treated thereafter, with respect to this policy, as if he or she were a member of staff.
 - 3.5. Nothing in this policy shall restrict the rights of students to hold copyright in their theses and other forms of assessment exercises and to submit these for examination. The College may require examiners to keep confidential the contents of a thesis where necessary to enhance or preserve the value of intellectual property contained therein.
4. College rights to intellectual property
- 4.1. Except as set out below, the College retains ownership of all intellectual property created by academic or general staff in the course of their employment. The College has certain rights under common law and by statute to ownership of intellectual property created by staff, whether members of the academic staff or the general staff, in the course of their employment.
 - 4.2. In practice the College wishes to exercise its rights of ownership only in cases where the intellectual property may have significant commercial value. If the College decides to be involved in the commercialisation of intellectual property and does not proceed with this process within 6 months after the decision, or fails to proceed with the process in a satisfactory and a timely manner, the College will relinquish its rights to the originator, on request.
 - 4.3. Where the College decides that it does not wish to involve itself in the exploitation of particular intellectual property the originator will be free to do so. In such circumstances the College will assign its rights to the originator upon request.
 - 4.4. The College is also prepared in many cases to concede ownership of copyright in works created in the course of employment, in return for a licence to use that work for teaching and research purposes.
 - 4.5. The College adheres to the principle that scholarly work should be made available in the public domain to advance knowledge and benefit the community. To the extent that this principle may on occasion conflict with commercial considerations the College will endeavour to resolve the conflict so that publication may occur without undue delay, having regard to the circumstances and the wishes of the originator.
 - 4.6. The College adheres to the principle that where there are financial returns from the commercial use of intellectual property the originator and his or her faculty should benefit equitably.
 - 4.7. The College may require students working with or under the supervision of staff in investigative or creative activities to agree to assign intellectual property rights to the College upon request. It undertakes that student originators will be treated equitably, and on the same basis as staff, with respect to the financial returns from the commercial exploitation of intellectual property.
 - 4.8. Staff should be aware that under the general law and the terms of their employment they must not use or disclose any confidential information acquired in the course of their employment, except with the consent of the College. This obligation would, for example, cover 'know-how' relating to materials developed within the College if that information is not in the public domain. Staff may also owe an obligation of confidentiality towards a third party in respect of information supplied to them in connection with research or administration: for example, personal information relating to a student, or commercially sensitive information belonging to a church or other organisation.
 - 4.9. With the exception of teaching materials (see below) and computer software, the College does not normally claim copyright ownership of the intellectual property contained in most intellectual products created by staff in the course of their employment, e.g. books, journal articles and most other creative works.
 - 4.10. Hence, except for teaching materials (see below) and computer software, the College agrees that the originator owns the copyright in any work or subject matter created in the course of employment, provided that:

- The originator distributes any remuneration received from the commercialisation of each such work or subject matter in accordance with the provisions below
 - The originator agrees to grant a payment free, non-exclusive and irrevocable licence to the College to reproduce, publish, perform, broadcast, disseminate and otherwise use the work or subject matter
- 4.11. The College will only seek to exercise its rights of ownership in cases where the intellectual property either:
- May have significant commercial value; or
 - Relates to teaching materials or computer programs developed in the course of employment.
- 4.12. Letters of employment and/or contracts of employment will specify the College's position with regard to the ownership and management of intellectual property created by the employee in the course of his/her employment. This may be in the form of a reference to this policy, which would then be included as an attachment. Position descriptions should clearly outline any activities required of employees that are likely to generate intellectual property in the course of their employment. Persons whose contracts were developed prior to the implementation of this policy will be advised of the policy and expected to comply with it.
- 4.13. Staff must not use or disclose any confidential information acquired in the course of their employment, except with the consent of the College. This obligation covers any intellectual property developed in the College that is not in the public domain. Staff may also have an obligation of confidentiality towards a third party in relation to information supplied to them in connection with research or administration.

5. Copyright in Teaching Materials

- 5.1. The College owns copyright in teaching materials which are produced by its staff in the course of their employment.
- 5.2. Subject to this the College will normally be willing to allow staff to use, in the course of subsequent employment by another College, teaching materials which they prepared while employed at the College. Similarly the College will normally allow staff and former staff to use teaching materials for publication and other academic purposes.
- 5.3. Where it is believed that an item of teaching material has strategic or commercial significance the College may forbid or restrict its use for other than the purposes of the College.
- 5.4. A staff member or a former staff member who wishes to use an item of teaching material for a purpose other than a College purpose may apply for permission to the relevant Dean of Faculty who will consider the matter, decide it and communicate the decision to the staff member and the Intellectual Property Officer who shall maintain an official record.
- 5.5. Where a staff member or a former staff member is dissatisfied with a decision made by a Dean of Faculty he or she may apply in writing to the President for a review. The President in that event will consider the original request of the staff member and the decision of the Dean of Faculty and determine the matter.
- 5.6. The use of teaching material by the College does not constitute commercialisation or commercial exploitation under this policy notwithstanding that the College may have received fees from students or any other revenue.