

RESOLUTION REGARDING INTELLECTUAL PROPERTY POLICY

Policy Summary:

It is the policy of The University of New England (“UNE”) to encourage creativity and entrepreneurship among its faculty, students, and staff. UNE invests in this endeavor by making available its own facilities, equipment, personnel, and information resources. UNE also actively seeks specific support for creative activity from external sources, both public and private.

The Policy supports the strategic goals of creating an outstanding student experience that promotes personal and intellectual development; recruiting and retaining excellent students, faculty and staff; and strengthening research and scholarship, as well as institutional financial resources.

Inventions, discoveries, and creative works that are developed by individuals at UNE may have commercial as well as scientific and scholarly value. The intent of this policy is to provide incentives that foster creative activity and to help assure that any such intellectual property produced will be exploited for the benefit of the creator(s), UNE, and the public. To help meet these policy objectives, UNE makes available, through its Office of Research and Scholarship, technical and legal assistance to protect ownership of intellectual property and to aid in its commercial development.

The specific aims of this policy are the following:

1. to encourage creativity among UNE faculty, students and staff;
2. to increase the likelihood that ideas, inventions, and creative works produced at UNE are used to benefit the public;
3. to protect the traditional rights of the creator(s) with respect to owning the products of their intellectual endeavors;
4. to assure compliance with the provisions of contracts with external sponsors; and
5. to provide that, when intellectual property is introduced for commercial development, the creator(s) and UNE share any net profits, where appropriate.

Scope of Policy

1. Who Is Covered: UNE Personnel Community

For purposes of this policy, UNE personnel community refers to UNE faculty members (this includes full time, part time, tenured, tenure-track and non-tenure track faculty), visiting faculty, postdoctoral scholars, researchers (research associates, scientists and engineers, and postdoctoral fellows), visiting scholars, investigators, administrators, office and technical staff, students, contractors (as appropriate), consultants, and all others whose work affiliation is with UNE, whether compensated by UNE or not. UNE personnel are obligated under this policy when their creative work is developed partially or entirely during performance of their UNE responsibilities or when it involves the use of UNE resources such as space, facilities, equipment, staff, or funds, as stipulated for the particular circumstances described in the sections below “Determination of Rights for Patentable Subject Matter” for both patentable and copyrightable material.

As a condition of affiliation with UNE, members of the UNE personnel community are bound by all UNE policies, including this one.

2. What Is Covered: Intellectual Property

All intellectual property produced at UNE by its personnel (defined above) is covered by this policy. Intellectual property shall consist of, for example and without limitation: inventions, creative works, patentable subject matter, copyrightable materials, know-how, electronic or paper documents, software, multimedia or audiovisual materials, and photographs. For purposes of this policy, intellectual property is divided into two categories:

- 2.1 “Patentable intellectual property” shall include, without limitation, all inventions, discoveries, know-how (despite the fact that these may not benefit from patent protection) and discoveries or other material that is patentable under US law (whether or not produced in the US), as well as all software that is excluded from “copyrightable material” (whether or not patentable under US law).
- 2.2 “Copyrightable intellectual property” shall include, without limitation, all creative works, electronic or paper documents, software, multimedia or audiovisual materials, and photographs, and any other materials that may be copyrightable under US law (whether or not produced in the US).
- 2.3 All research lab notebooks, data sets, data images, gene constructs, reagents, animal, human and plant cell lines, model organisms remain the exclusive property of UNE.

2.1 Patentable Intellectual Property

Responsibility for Disclosure of Patentable Intellectual Property: UNE personnel who alone, or in association with others, create patentable subject matter with any use of UNE resources are responsible for disclosing the patentable subject matter to UNE. Such disclosure shall be made in a timely manner when it can be reasonably concluded that a patentable subject matter has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator and UNE. The disclosure form is available at <https://www.une.edu/research/sponsored-programs/policies-forms>

Determination of Rights to Patentable Subject Matter: Except for Patentable Intellectual Property developed independently and without UNE resources as noted below, all Patentable Intellectual Property produced by UNE Personnel shall be deemed "work made for hire" and be UNE's sole and exclusive property. UNE will assert ownership rights to patentable intellectual property developed under any of the following circumstances:

- 2.1.1 Development was funded by an externally sponsored research program or by any agreement that allocates rights to UNE.
- 2.1.2 Development required use of UNE resources (for example but not limited to facilities, equipment, funding, or personnel). UNE has rights to patentable material derived from research carried out with any use of UNE resources. However, patentable material developed independently by the creator outside of normal duties associated with the creator's position and with no use of UNE resources or facilities is vested with the creator and/or with the organization whose resources were used.
- 2.1.3 The creator was assigned, directed, or specifically funded by UNE to develop the material.
- 2.1.4 Material was developed by administrators or staff in the course of their employment duties and constitutes “work for hire” under US law.

2.2 Copyrightable Intellectual Property

Responsibility for Disclosure of Copyrightable Intellectual Property: In contrast to historical business practice, the tradition of academic institutions is to give its personnel the right to retain ownership of their copyrightable products. This policy protects that traditional right and personnel are not obligated to disclose the creation of

copyrightable material, even when the product might have commercial value, unless the material was developed under one of the qualifying conditions listed in the next section, in which case the creator is responsible for timely disclosure.

Determination of Rights to Copyrightable Intellectual Property: Except for Copyrightable Intellectual Property developed independently and without UNE resources as noted below, all Copyrightable Intellectual Property produced by UNE Personnel shall be deemed "work made for hire" and be UNE's sole and exclusive property. To the extent that copyrightable material is developed for courses or curriculum at UNE by such individuals, and as a condition of employment by UNE, the creators of such copyrightable material grant a non-exclusive, royalty-free, perpetual license to UNE to use of such material for educational and research purposes. UNE will assert ownership rights to copyrightable intellectual property developed under any of the following circumstances.

- 2.2.1 Development was funded by an externally sponsored research program or by any agreement, which allocates rights to UNE.
- 2.2.2 UNE personnel were assigned, directed, or specifically funded by UNE to develop the material, or UNE has negotiated an understanding or formal contract with the creator.
- 2.2.3 The material was developed with extraordinary or substantially more use of UNE resources than would normally be provided for the creator's employment duties. This might occur as disproportionate use of staff time, networks, equipment, or direct funding.
- 2.2.4 Works created by non-faculty independent contractors on behalf of UNE, unless otherwise specified in a written agreement between such independent contractor and UNE. Such contractors do not share in the creator's portion of Net Royalty Income (as defined below under "Income Distribution").
- 2.2.5 Laboratory Notebooks, data sets, biological materials.

Scholarly and Artistic Works Exception: "Scholarly and Artistic Works" means copyrightable and copyrighted works that are in the nature of academic and scholarly works of authorship and works of visual art, including but not limited to photography, film, audio-visual works, sculpture, painting, choreography and the like. "Scholarly and Artistic Works" include by way of example 1) scholarly articles and papers written for journal publication (rights to these is assigned to the publisher as a condition for publication), presentations and scholarly papers prepared for seminars and conferences, pedagogical works, and teaching and curriculum materials (including classroom lectures, seminars and presentations reduced by or for the author to written or other recorded form); and 2) paintings, drawings, musical compositions and performances, dramatic compositions and performance, poetry, fiction and other works of artistic expression authored by UNE faculty, post-graduate students, and postdoctoral fellows and postdoctoral associates ; provided that, the definition shall not apply to the works of UNE Students authored pursuant to activities undertaken as Teaching Assistants that are Scholarly or Artistic Works as described in this paragraph will remain the property of their authors.

"Scholarly and Artistic Works" shall be and remain the property of their Authors ("Individually-Owned Works") unless such copyrighted works are (i) developed as part of a UNE project, program or activity that is the subject of an external UNE agreement; (ii) developed within the scope of employment by non-faculty UNE Employees; or (iii) developed as part of a UNE- Commissioned project. All Scholarly and Artistic Works described in the preceding sentence under (i), (ii), or (iii) are UNE-Owned.

"Student Authored Scholarly and Artistic Works". Copyright to individual capstone project, sufficiency, thesis, and dissertation reports and documents are owned by the author, subject to other agreements. In the case of a jointly written document, copyright is held jointly by all authors, subject to other agreements. In cases when such a document was submitted to fulfill a degree requirement, students will grant to UNE a nonexclusive, royalty-free license to distribute copies of the document, subject to other agreements.

2.3 Intellectual Property Created by Students

It is the general policy of UNE that UNE Students shall have ownership rights in Intellectual Property developed by them independently, except where it is developed using UNE funds, part of any project, directed study, directed research, or where UNE has external obligations with respect to Student Intellectual Property, such as via a contract with a company, or where there are federal funds involved. If there are no UNE external obligations for the Intellectual Property, Student Intellectual Property may assign to UNE and be treated as a UNE Invention.

If there is Student Intellectual property that is free from UNE external obligations, the Students may choose to enter into an agreement with UNE for the value of that Intellectual Property. Such value will not exceed 1% of the current value of that Intellectual Property. The waiver provisions of this Policy shall apply to UNE Students (Section 6).

Activities undertaken by UNE Students receiving financial aid as tuition assistance shall not be considered “UNE funds” unless such assistance consists of employment at UNE (including, but not limited to teaching assistantships) or is charged against a grant, contract or other agreement between UNE and an external funding source.

As a condition of study or a degree award, each student shall grant to UNE a non-exclusive, royalty-free, non-commercial license to reproduce and publicly distribute, including by electronic means, copies of the student’s work in which the student retains copyright.

3.0 Significant Use of UNE Resources

Generally, an invention, software, or other copyrightable material, will not be considered to have been developed using UNE funds or facilities if:

- 3.1 only a minimal amount of unrestricted funds has been used; and
- 3.2 the Intellectual Property has been developed outside of the assigned area of research of the inventor(s)/author(s) under a research assistantship or sponsored project; and
- 3.3 only a minimal amount of time has been spent using significant UNE facilities or only insignificant facilities and equipment have been utilized (note: use of office, library, machine shop facilities, and of traditional desktop personal computers are examples of facilities and equipment that are not considered significant); and
- 3.4 the development has been made on the personal, unpaid time of the inventor(s)/author.

4.0 Intellectual Property Developed Under Sponsored Research Agreements

Ownership of copyrightable and patentable intellectual property developed pursuant to an agreement with any sponsor will be governed by the provisions of that agreement.

Government and nonprofit sponsors generally allow rights to intellectual property that arise from the research program to vest with the institution, subject to certain retained rights held by the federal government. Under special circumstances, sponsors, including government agencies, will provide for the institution to retain title to all intellectual property that arises in the course of the research program, with the sponsor retaining an option to acquire commercialization rights through a separate license agreement.

5.0 Special Agreements

Since UNE aims to encourage creativity, it reserves the right to allow some flexibility in applying this policy. The inventor(s) or author(s) may request the Associate Provost for Research and Scholarship to release the intellectual property to them, at their own expense, unless other agreements exist.

6.0 Waiver or Return of Rights

UNE may determine that UNE will not take ownership of invention or UNE may, after initially exercising ownership, determine that UNE will no longer pursue or maintain intellectual property protection, for example in cases without a revenue producing license. Where UNE determines that it will not pursue or maintain intellectual property protection and licensing of UNE-Owned Intellectual Property, it will promptly and in writing advise the inventor(s) or author(s). To the extent permitted by external obligations, including any applicable laws and regulations, UNE may consider application by inventor(s) or author(s) for alternative funding of prosecution or maintenance of intellectual property, or waiver of ownership rights and the terms under which such waiver may be made. UNE will not consider requests for waiver of ownership with respect to any invention or software program unless all inventors and authors, as legally determined, concur with the request for waiver. Ownership waivers, if granted, will be made to all relevant inventors and authors as joint owners. Waiver agreement terms between UNE and the inventor(s) will include a perpetual, royalty-free right and license retained by UNE to use the invention or software for its own education and research purposes and will be further subject to any external obligations as may be required.

7.0 Administration of Intellectual Property Policy

Except as otherwise specified in this policy or as otherwise duly authorized by UNE, the Associate Provost for Research and Scholarship has responsibility for the interpretation, implementation and oversight of this Policy. The Associate Provost for Research and Scholarship will issue such administrative guidelines and procedures to facilitate Policy as may be reasonable and consistent with it. In accordance with otherwise applicable UNE policy or contract terms, UNE may also pursue disciplinary, or civil or criminal action, for Policy violations.

UNE personnel who wish to pursue the commercialization of their independently developed and owned intellectual property through UNE may offer such intellectual property to UNE by following the administrative process outlined above.

8.0 Income Distribution

Costs and Net Royalty Income: Unless otherwise agreed, Net Royalty Income shall mean Gross Royalties in the form of cash or cash proceeds whether from the sale of equity or obtained in licensing transactions, less all commercialization costs, including but not limited to, previous and ongoing billed costs for protection of intellectual property, marketing, legal fees and other licensing costs.

Distribution of Net Royalty Income: With respect to intellectual property owned by UNE hereunder, Net Royalty Income shall be distributed (usually annually) as follows:

- 33.3% Creator(s) (personal)
- 33.3% Creator(s) College/ Department
- 33.3% University Share

It is encouraged that the College/Department share be prioritized to the inventor's laboratory if possible. The funds should be directed towards a continued investment in research and technology development. College and Department shares may involve multiple Colleges or Departments. If this occurs, the split will go according to

how the inventors have agreed to split their share. The University Share is to be invested in the university's research and/or technology transfer activities through programs administered by the Associate Provost for Research and Scholarship.

Note that Intellectual Property created by students may have a different distribution per the conditions in section 4.

The creator will receive personal royalties as income. If the creator chooses to donate a portion of the royalties to research, the creator may do so in accordance with the policy and procedures of the Institutional Advancement Office of UNE and in accordance with local, state and federal tax policies.

Where all or a portion of the Royalty Income received by UNE is in shares of stock, stock options, warrants or other indicia of ownership ("Equity"), Inventors and Authors shall be entitled to shares to be negotiated with the company. If Inventors and Authors obtain Equity from the company, UNE Equity will be wholly owned by UNE. For all other Inventors/Authors who did not receive Equity from the Company, UNE, upon occurrence of a liquidation event, will distribute cash according to the distribution agreed upon among the inventors in their original invention disclosure.

UNE may postpone the distribution of Net Royalty Income when future expenses relating to the applicable technology, such as patent prosecution costs, or an infringement suit, are reasonably anticipated.

8.1 Creator Equity Participation

Creators may receive equity in return for their contributions as founders or consultants only with concurrence of the Provost. Annually, creators must fully disclose their equity positions and shall otherwise be and remain in compliance with the UNE Conflict of Interest policies.

9.0 Conflict of Interest and Conflict Avoidance in Equity Transactions

Where a Creator(s) holds or will acquire an equity or founder's stock and/or option position in a company to which Intellectual Property that the Creator(s) helped develop is licensed by UNE, UNE will accept an equity position in lieu of royalty. In all such situations, Creator(s) who remain in the employ of UNE will not use UNE students for research and development projects sponsored by the company without expressly disclosing to students the inventor(s)' equity ownership interest in the company and without the express approval of the academic department head or other appropriate administrative unit supervisor. In addition, inventor(s) will not restrict or delay access to their research results so as to benefit the company (apart from any UNE- authorized agreement with the company) and will not engage in such other activities that may create a presumption of conflict of interest between their activities as faculty or staff of UNE and their activities with or on behalf of the company. The limitations and conditions of this paragraph are in addition to those required by UNE's conflict of interest or other related policies.

10.0 Survival of Terms

All licenses and rights granted to UNE will survive any termination of employment or end of enrollment by a student as applicable.

11.0 Conflict Resolution

When a disagreement arises between UNE and the inventor(s) concerning the interpretation of this policy, an Intellectual Property Appeal Board (the "Appeal Board") will be appointed and convened to resolve the disagreement. Appeals shall state explicitly what is in dispute and be submitted in writing to

the President of UNE and to the UFA Faculty Affairs Committee. When a request for an appeal is received, an ad hoc Appeal Board shall promptly be appointed.

11.1 The Appeal Board is composed of five persons, three appointed by the University Faculty Assembly and two appointed by the UNE Associate Provost for Research and Scholarship (APRS). The UFA-appointed members shall be members of the faculty chosen from a current list of tenure-track faculty members who have agreed to serve on the Appeal Board if so requested, and who have a variety of experience. In making their respective appointments, UFA and the UNE APRS will seek to ensure that some of the appointees are familiar in detail with this policy and its past applications, and some of the appointees are familiar with the technical area of the intellectual property under consideration. No person with a special interest in the outcome of its decisions, including people who have participated in the decision that is under appeal, shall be appointed to the Appeal Board.

11.2 The Appeal Board shall promptly meet, elect a chair, and hear the appeal. The Appeal Board shall receive written briefs from each party to the dispute, take oral presentations open to all parties and their counsels, and receive written emendations to the written briefs. The Appeal Board shall have the power to summon witnesses and documents necessary to reaching its decisions. The Appeal Board shall consider all relevant facts, policies, and precedents, and then reach a decision. The Appeal Board shall report its decision in a written finding that includes the principal arguments leading to its conclusions to the President who will make the final decision.

12.0 Use of UNE Name, Mark, or Insignia

The UNE name, seal, or logo may not be used:

1. in conjunction with any private or commercial enterprise.
2. in tandem with the advertisement of any product.
3. by any individual or group promoting itself.

Any questions regarding the use of the UNE name, seal, or logo should be referred to the UNE Vice President of Communications.

12.1 Changes to this Policy

The Provost will periodically initiate review of this Policy to address legal developments and to reflect experience gained in its administration. Policy changes will be made in accordance with governance and applicable legal requirements.

Effective 14 November 2019