

# Intellectual property for HDR students

Intellectual property (IP) refers to the products of your creativity, for example, original literary and artistic works, scientific inventions, etc.

IP rights are the rights that you have over how your IP is used. **There are 2 types, and they're separate and distinct.**

1. **Ownership/commercial/economic rights give you the opportunity to generate income from your IP.** These rights can be assigned or licensed to another party.
2. **Moral rights include your rights to be properly attributed or credited, not have your work falsely attributed to others, and to protect your work from derogatory treatment.** Moral rights can't be transferred to a third party – even if you've assigned or licensed the economic rights – but you can agree to waive your moral rights.

IP is divided into distinct categories, which are each afforded different types of legal protection. These are:

- copyright (literary, artistic, dramatic or musical works, films, broadcasts, multimedia and computer programs)
- patents (new or improved products or processes, or a combination of both)
- trademarks
- designs
- circuit layout rights
- plant breeder's rights
- confidentiality/trade secrets.

Copyright and circuit layout rights are automatic. For the others, IP rights must be formally applied for/registered.

## IP at the University of Sydney

IP at the University is regulated by the [Intellectual Property 2016](#) (IP Policy) which deals with the following areas:

- ownership rights of staff, students, and visitors
- reporting, development, and commercialisation of IP
- distribution of proceeds resulting from commercialisation
- moral rights associated with IP
- dispute resolution processes.

**Under the IP Policy, you own the copyright in your thesis and scholarly works, unless there is an agreement to the contrary.**

You also own all other IP you create, unless:

1. You've entered into an agreement to assign or license your IP to the University. **You can be required to do this to participate in any research project that already has or may create IP in the future, or which has funding provided by a third party.**
2. The supervisor or any other staff member has made a substantial intellectual contribution (defined for this purpose as being a contribution of 35% or more) to the creation of the IP.
3. The IP has been created using the University's background IP.

Even if you've assigned your IP rights, you'll still most likely be entitled to a share of any commercial benefits in the future.

**Before you sign any agreement to transfer your rights, [get independent advice from our Legal Service](#).** We will be able to assist you to understand the agreement and may be able to negotiate a variation of the conditions of your involvement in the research project.

## Why does IP matter to me?

In a collaborative or supervisory relationship that lasts over a period of years, it may become difficult to delineate, as well as quantify, respective contributions, meaning that issues may arise. SUPRA has seen a lot of research students in this position, and so we strongly recommend that you keep records/emails/drafts etc., so you're able to clarify your ownership of IP if you ever need to do so.

If you've created IP that you'd like to commercialise, you can [contact the University's Commercialisation Office for support](#).

Their initial advice is confidential and free, although any action taken by the Commercialisation Office to develop your IP may require you to enter into an agreement with the University. **This usually requires assigning your IP rights in return for a share of income.**

## Authorship credit

The law relating to your moral rights requires that you be acknowledged appropriately as the author of your works.

The University's [Research Code of Conduct 2023](#) (the Code) sets out the responsibilities of researchers at the University – both staff and students. The Code clarifies what is required to claim authorship to all forms of publications, and requires that all contributions be properly acknowledged.

To be listed as an author you must have made **a substantial intellectual or scholarly contribution** to the published work in at least one, or preferably 2 or more, of the following areas:

- the conception and design of the project or output
- contribution of knowledge (including indigenous knowledge)
- acquisition of data (where this requires significant intellectual input)
- the analysis and interpretation of data
- drafting or critically revising significant parts of the research output.

Examples of substantial intellectual contributions include:

- developing the research design
- writing parts of the manuscript
- contributing or integrating theoretical perspectives
- developing conceptual models
- designing assessments
- analysing data
- interpreting results.

It's important to note that, unlike the IP Policy, **the Code does not quantify a minimum level for the substantial intellectual contribution to give rise to these rights.** Further, the Code only states the minimum requirements. If there are funding provisions, discipline standards, best practice guidelines (such as ICMJE), or journal requirements that apply,

the Code requires that authorship must be attributed by following the most stringent of any applicable requirements.

## Authorship order

There's no reference in the Code to authorship order decisions. As a general guide, however, it's recommended that the order of authorship credit should reflect the relative contributions to that specific publication, regardless of an author's role in the overall project. Having said this, you'd ordinarily be listed as first author on any multiple-authored paper that's based primarily on your thesis or master's research report.

## Agreement to publish

**All co-authors must agree to publish**, meaning that any individual author can withhold consent and prevent publication. If an author (or authors) proceed to publication without crediting everyone who qualifies as an author, and without having their consent to publish, they open themselves up to an allegation of research misconduct.

To make a complaint or raise issues about authorship [contact a Research Integrity Advisor](#).

## Data and primary material ownership

Under the [Research Data Management Policy 2014](#), the University may assert ownership over any data and primary materials created by a student. This policy also sets out the responsibilities of research students in relation to the proper management of data and primary materials (clause 13(6)). More details on these requirements can also be found in the [Research Data Management Procedures 2015](#).

## Use of other people's intellectual property in your work

If you wish to reproduce part or all of a work that is subject to copyright in your thesis, you'll need to [work out if you need permission from the copyright holder](#) – even if it's freely available for download on the internet. **You can't rely on the fair dealing provisions that allow use of some copyrighted material for research or study**, because these provisions won't permit your thesis to be made available through open access and won't allow all or parts of it to be published by a publisher.

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**Situations where it may be necessary to seek permission include using:**

- lengthy quotes or excerpts of text from published books and journal articles
- entire works, such as a journal article, even if you're one of the authors
- a graph or a figure
- material on the internet
- artworks, diagrams, illustrations, maps and photos
- extracts from recorded music, or clips from TV programs and movies.

To make sure you're not infringing someone else's IP rights:

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3. **If you need to seek permission, do it as soon as you can** as it might take some time.
4. **Make sure you correctly attribute other people.** Failure to do so is not only infringement of their moral rights but could leave you open to allegations of [academic integrity breaches](#).

## Further information

[Find more general information at IP Australia](#) – the Australian government agency responsible for managing IP rights in Australia.

The University Library has [a range of online resources relating to copyright](#) with a section dedicated to publishing your research.

[The Australian Copyright Council](#) has a wide range of information sheets relating to copyright.

If you need further assistance with an intellectual property or research integrity matter, [contact our legal or casework services for help](#).

# Disclaimer

This information is current as at December 2023 and is intended as a guide to the law as it applies to people who live in or are affected by the law as it applies in NSW. It does not constitute legal advice.

Written by SUPRA Legal Service December 2023.