

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 Policy 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.

We strongly recommend that you gain independent [advice from our Legal Service](#) before you sign any agreement to transfer your rights. 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 commercialisation team](#) in the University's Research portfolio for support.

Initial advice is confidential and free, although any action taken by the commercialisation team to develop your IP may require you to enter into an

agreement with the University. This usually requires the assigning of 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 2019](#) (the Code) sets out the responsibilities of researchers at the University (both staff and students). The Code clarifies what is required to claim authorship and requires that all contributions be properly acknowledged.

In order to be listed as an author you must have made **a substantial intellectual contribution** to the published work in one or more of the following areas:

- the conception and design of the project
- the analysis and interpretation of the research data or of the eligibility or suitability of potential subjects of research
- drafting significant parts of the work or critically revising it so as to contribute to the interpretation.

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 also having their consent to publish, they open themselves up to an allegation of research misconduct.

Complaints or issues about authorship can be raised with a faculty [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 [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.

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:

1. Check the Terms of Use to clarify whether or not you need to seek permission. The material might have been made available open license or under a Creative Commons license that permits your proposed use without further permission.
2. Check the copyright status of any material in your thesis that's already published. If you assigned or exclusively licensed all your copyright to your publisher, you may not be able to provide open [access to your thesis](#) without their permission.
3. If you find you need to seek permission, do this 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 dishonesty and plagiarism](#).

Further information

- More information on IP generally can also be found 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, the [SUPRA Legal or Advocacy Service](#) can help you.

Disclaimer

This information is current as at January 2021 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.