

**LA TROBE UNIVERSITY**

**INTELLECTUAL PROPERTY STATUTE 2009**

The Council of La Trobe University makes this Statute under section 30 of the *La Trobe University Act 1964*.

**PART 1—PRELIMINARY**

**1. Name and commencement**

- (1) This Statute is the **Intellectual Property Statute 2009**.
- (2) This Statute comes into full force and effect on 1 July 2009.<sup>i</sup>

**2. Interpretation<sup>ii</sup>**

In this Statute—

***Commercial Exploitation*** means the application, publication, development, use, assignment, licensing, sub-licensing, franchising, exploitation, sale or other utilisation of Intellectual Property for the purpose of generating financial or other commercial gains;

***Computer Program*** has the same meaning as in the Copyright Act;

***Confidential Information*** means information of any kind which, because of its confidential character, is capable of protection by contractual or equitable means, and includes information of a valuable commercial or technical character;

***Copyright Act*** means the *Copyright Act 1968* (Cth);

***Copyright Work*** means any artistic work, literary work, dramatic work, musical work, sound recording, cinematograph film, television broadcast, sound broadcast or published edition of work within the meaning of the Copyright Act;

***Creator*** means a student, Staff Member or Honorary Staff Member who creates or discovers, whether in conjunction with other persons or not, any invention, discovery or Intellectual Property;<sup>iii</sup>

***Honorary Staff Member*** means any person who holds an honorary position or other equivalent position at the University;

***Intellectual Property*** means any rights in relation to copyright, designs, inventions, plant varieties, trade marks (including

service marks), Confidential Information, trade secrets, know-how, circuit layouts and patent rights, whether registered or unregistered;

***Literary Work*** has the same meaning as in the Copyright Act;

***Publishable Work*** means a Literary Work the subject matter of which is primarily concerned with scholarship, research or academic debate, or which is a creative work of fiction or poetry;

***Specified Work*** means any literary, dramatic, musical or artistic work but does not include—

- (a) Teaching Materials;
- (b) Computer Programs; or
- (c) Copyright Works subject to an agreement under section 9;

***Staff Member*** means a member of the full-time, part-time or casual academic or general staff, whether holding a permanent or other position;

***Teaching Materials*** means any Copyright Works developed or used by a Staff Member for the purpose of teaching and education at the University and made available to a student including without limitation reading lists, subject plans, curriculum outlines, lecture notes, visual aids, exam scripts or websites in any format whatsoever including printed or electronic format, but does not include personal notes created by a Staff Member and not distributed to a student.

## **PART 2—OWNERSHIP, ASSIGNMENT AND PROTECTION**

### **3. Ownership of Intellectual Property**

Subject to this Statute and to any written agreement between the University and a Staff Member, the University owns all Intellectual Property created by a Staff Member which is created in the course of, or pursuant to, or under the terms of, the Staff Member's employment with the University.

### **4. Academic Staff Members to own copyright in Specified Works**

- (1) Subject to this Statute, an academic Staff Member owns copyright in a Specified Work created by that academic Staff Member.<sup>iv</sup>
- (2) If an academic Staff Member creates a Specified Work that is not a Publishable Work, the University shall have a non-exclusive, royalty-free, worldwide and irrevocable right to Commercially Exploit, licence, use, perform, reproduce or communicate the Specified Work for the purposes of education, teaching or research.<sup>v</sup>

### **5. Teaching Materials**

- (1) Where Teaching Materials are created by an academic Staff Member, the academic Staff Member shall have a non-exclusive, royalty-free, worldwide, non-transferable licence to use the Teaching Materials for teaching and research purposes, both during and after the term of the Staff Member's employment at the University.<sup>vi</sup>
- (2) The licence given under subsection (1) is subject to any relevant contractual arrangements entered into by the University with a third party, being contractual arrangements of which the academic staff member has notice or ought reasonably to have had knowledge.<sup>vii</sup>

### **6. Student Intellectual Property**

Intellectual Property developed by a student in the course of his or her studies at the University is owned by that student.

### **7. Sharing the proceeds of Commercial Exploitation**

- (1) Subject to subsection (2), the University may determine the conditions under which proceeds accruing to the University from the Commercial Exploitation of Intellectual Property which the University owns or is licensed to use will be shared with the Creators of the Intellectual Property, including any Creators who are students.<sup>viii</sup>
- (2) A Staff Member is not entitled to receive any proceeds derived from the Commercial Exploitation of Teaching Materials developed for the

purpose of delivering a degree, diploma, course or unit of study to a student regardless of where, by whom and what mode the degree, diploma, course or unit of study is delivered.<sup>ix</sup>

**8. Securing and protecting Intellectual Property<sup>x</sup>**

- (1) A Creator of Intellectual Property which the University owns or in which the University has an interest under this Statute—
  - (a) must, at the request of the University, execute any documents and do any acts or things required by the University, including without limitation execute a deed of assignment, to give effect to the provisions of this Statute including without limitation to secure or protect the University's title to or interest in the Intellectual Property; and
  - (b) must refrain from dealing with the Intellectual Property in any manner that is inconsistent with the University's rights in the Intellectual Property.
- (2) A Creator of Intellectual Property must not disclose or use that Intellectual Property without the written authorisation of the University if it is likely that disclosure or use of the Intellectual Property would prejudice the University's ability to protect, Commercially Exploit, prosecute or enforce the Intellectual Property or its rights in the Intellectual Property.<sup>xi</sup>
- (3) A Creator of Intellectual Property must give notice of the creation of the Intellectual Property—
  - (a) in the manner and form required by the University; or
  - (b) to the Deputy Vice-Chancellor (Research) within 14 days of the creation or discovery of the Intellectual Property if—
    - (i) the Intellectual Property is or includes an invention, a circuit layout, an unregistered design or an unregistered plant variety; and
    - (ii) the University has not otherwise required the Creator to give notice of the Intellectual Property.<sup>xii</sup>
- (4) A commencing Staff Member must declare to the University any interest in pre-existing Intellectual Property which could reasonably be expected to impact on or limit his or her ability to perform research or related tasks under the Staff Member's contract of employment with the University.<sup>xiii</sup>

**9. Agreements**

- (1) The University may enter into an agreement with a Creator or any other person (including a Creator who is a student) regarding the ownership, licensing, use or Commercial Exploitation of Intellectual Property.
  - (2) An agreement made by the University under subsection (1) prevails over any provisions of this Statute to the extent of any inconsistency.
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## **PART 3—GENERAL**

### **10. Regulations**

- (1) The Council may make regulations—
  - (a) for or with respect to or providing for any matter or thing for the purposes of this Statute; and
  - (b) amending or revoking any regulations made under this Statute.
- (2) The Council must ensure that regulations made under this Statute are promulgated by having the regulations displayed on an official notice board of the University for a period of at least 14 days.
- (3) For the purposes of determining when regulations made under this Statute come into full force and effect within the meaning of section 30(4) of the Act, the regulations are taken to have been promulgated in accordance with sub-section (2) at the start of the first day on which they are displayed on an official notice board of the University.

### **11. Revocation of earlier University legislation**

The following Statute and regulations are **revoked**—

- (a) Statute 32 – Intellectual Property;
- (b) Regulation 32.1 – Inventions, Discoveries and other Intellectual Property.

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#### **LEGISLATIVE HISTORY**

This Statute was approved by the Council on 2 March 2009 and by the Minister on 13 August 2009. It was amended by the **Intellectual Property (Amendment) Statute 2009** on 14 October 2009 (LS Ref 08/02657) and by the **Faculties Statute 2010** on 16 June 2010 (LS Ref 09/01974).

#### **ENDNOTES**

- <sup>i</sup> Despite section 1(2), this Statute came into full force and effect on 13 August 2009 (being the day on which the Minister approved the Statute: see section 30(3) of the Act).
- ii Section 2: definition of *Intellectual Property Policy* omitted by the **Intellectual Property (Amendment) Statute 2009**.
- iii Section 2: definition of *Creator* substituted by the **Intellectual Property (Amendment) Statute 2009**.
- iv Section 4(1): amended by the **Intellectual Property (Amendment) Statute 2009**.
- v Section 4(2): substituted by the **Intellectual Property (Amendment) Statute 2009**.
- vi Section 5(1): substituted by the **Intellectual Property (Amendment) Statute 2009**. Amended by the **Faculties Statute 2010**.
- vii Section 5(2): substituted by the **Intellectual Property (Amendment) Statute 2009**.
- viii Section 7(1): substituted by the **Intellectual Property (Amendment) Statute 2009**.
- ix Section 7(2): substituted by the **Intellectual Property (Amendment) Statute 2009**.
- x Sections 8(5) and 8(6) omitted by the **Intellectual Property (Amendment) Statute 2009**.
- xi Section 8(2): substituted by the **Intellectual Property (Amendment) Statute 2009**.
- xii Section 8(3): substituted by the **Intellectual Property (Amendment) Statute 2009**.
- xiii Section 8(4): substituted by the **Intellectual Property (Amendment) Statute 2009**.