

Guidelines on Graduate Research Student Intellectual Property

1. Intellectual Property Explained

1.1 What is Intellectual Property (IP)?

Intellectual property (IP) is a term that covers a range of legal rights for the protection of creative effort, particularly the protection of economic investment in that creative effort.

Intellectual property rights can be bought, sold, leased and dealt with like any other form of property such as land and goods. One of these rights is the right to *prevent* other people using the ideas or inventions. If you own intellectual property, you have:

- exclusive rights to make, use or sell the property
- the right to assign, transfer, waive rights, license, donate, etc.
- an entitlement to registration where applicable
- legal rights to protect property or to seek damages for improper use
- exclusive ability to control development of the intellectual property
- liability for ownership, including taxation, legal action in negligence, etc.

1.2 Types of Intellectual Property

1.2.1 Copyright

Copyright protects the original expression of ideas, but not the ideas themselves.

Some activities within a university which lead to the creation of copyright include:

- the writing of books and articles, theses, computer software, dramatic works and manuals
- composing music
- making an original video recording, DVD, CD-ROM or film
- creating a work of art
- designing a questionnaire or form.

Copyright protects against unauthorised copying of your work. Copyright protection also extends to adaptations, translations, abridgements, broadcasting and performance.

Unlike other kinds of intellectual property, copyright protection arises automatically when you create a work. You don't need to register copyright protection in Australia as is the case for other types of intellectual property such as patents. Generally speaking, copyright lasts for the lifetime of the creator, plus 70 years.

1.2.2 Patents

A patent protects how an invention works or functions. Examples of activities which can lead to the creation of patent rights include:

- creating a new product or process
- creating a new drug
- developing aspects of a particular technology
- developing a genetically modified plant, animal or microorganism.

To secure patent rights, an application must be made to IP Australia usually before any publication of the ideas for which patent protection is sought.

1.2.3 Designs

Registered designs protect the visual appearance of a product but not the way it works. Creating a new design that can be used to give shape to a three-dimensional mass-produced article could potentially be registered under the Designs Act 2003.

For example, if a new machine is developed at the university, it may lead to both patent *and* design rights. It's important to emphasise that design rights protect *only the appearance* of the article, *not* the way they *function*.

Designs consisting solely of features of two-dimensional pattern or ornamentation may also be registered. However, registration will only be necessary if the design has an industrial or commercial use as designs that ornament an article are also protected under copyright.

1.2.4 Trade marks

A trade mark is a way of identifying a unique product or service. The marketing of products and the provision of services may lead to the development of names or logos associated with those products or services. Some trademarks may be registrable.

1.2.5 Circuit layouts

The layout of integrated circuits is protected without the need for registration by the Circuit Layout Act.

1.2.6 Plant Breeder's Rights

The breeding or genetic engineering of a new strain of certain types of plant (e.g. a disease-resistant species) will allow the breeder to register the new plant under the Plant Breeders Rights Act 1994.

1.2.7 Trade secrets

Confidential information is a type of intellectual property and the courts will protect it, commonly under a confidentiality or non-disclosure agreement.

Often confidential information is created concurrently with some of the other rights above, but usually consists of ideas or know-how, which cannot be registered in the same way as other types of intellectual property.

2. Monash University's Intellectual Property Regulations

Monash University is a public research institution mandated to conduct research and utilise its resources for the public good.

This includes identifying, protecting, and where appropriate, commercialising intellectual property arising from its research activities. The University's rules governing intellectual property are set out in Part 5 of its [Monash University \(Vice-Chancellor\) Regulations](#). (**Note:** students whose IP was created on or before 27 May 2014 should refer to chapters 6.1 and 6.2 of the 2016 editions of the [Handbooks for Doctoral Degrees and Handbook for Research Master's Degrees](#), as much of the terminology referenced below is specific to students who commenced their degree on or after 28 May 2014).

Upon admission as a graduate research student, you become bound by the Monash University (Vice Chancellor) Regulations, in exactly the same way you are bound by all other Regulations applying to the University's students.

Depending upon the research you are undertaking, and the resources on which you are drawing (physical, financial but also by way of the intellectual contributions of others), you may be required to **assign** your intellectual property to the University.

2.1 What does "assignment" mean?

In this context, "assignment" is the transfer, by deed or agreement, of the intellectual property rights (IP) arising in a particular work or invention. It is also possible to assign rights in future IP (IP that has not yet been created). This is usually done as part of an agreement under which a sponsor provides funding for a research project.

2.2 Do I own copyright in my thesis?

Yes. As a student you own copyright *in the original content* in your thesis under the University's Regulations. When you submit your thesis, you are required to grant the University a **non-exclusive licence** to enable your thesis to be placed online through Monash University's [figshare service](#).

Under the Regulations, you also own rights in any other intellectual property created by you, unless that intellectual property is part of a collaborative research activity, in which case you are required to assign these rights to Monash University via a [Student Assignment Deed](#). (see **section 6.2.7** below).

2.3 What does it mean to grant a “non-exclusive” licence?

The licence granted to the University is not an assignment of the copyright of your thesis: it is similar to a grant of permission provided by you, as copyright holder of your thesis.

Other researchers, including your supervisors, wishing to publish a paper using data or content from your thesis will, likewise, need to seek your permission, or obtain a licence from you.

As the licence granted to Monash University is non-exclusive, you are free to publish your thesis (in part or in whole) with an external publisher (e.g. within a conference proceedings or in a journal or as a book). In such cases the University will cease to provide open access to the full-text thesis online when requested by the publisher or you as student/author.

2.3.1 What about third party content in my thesis or material from other sources?

If you are publishing your thesis open access you will either need to get permission from the copyright owners of that content from other sources or rely on the copyright exception of fair dealing. See [using third party copyright material](#) or email university.copyright@monash.edu

If you are publishing your thesis restricted access, only researchers who request the thesis from their library for research and study will see the full-text. You do not need permission for the third party content.

2.3.2 What about my work that is already published and is included in the thesis?

Even though you may be the author of the work, the publisher is usually the copyright owner. If you want to make your thesis available open access you will need to get permission from the publisher. Check if the publisher has already granted you this right in your publishing agreement or search the [SHERPA/RoMEO UK](#) database for what version you can make available. Use the [permission template](#) or go through the publishers' online link to [Rightslink](#) to ask for permission. Email university.copyright@monash.edu for help.

2.4 What is meant by a “collaborative research activity”?

Under the [Monash University \(Vice-Chancellor\) Regulations](#), a “**Collaborative Research Activity**” includes a research project that is:

- (a) undertaken by more than one person; or
- (b) subject to an agreement with a third party under which the University has obligations relating to intellectual property; or

- (c) based on a concept or proposal developed by a member of staff, affiliate or third party or collaboratively by the student and a member of staff, affiliate or third party other than one which the student has independently developed and the research for which the student will independently undertake; or
- (d) undertaken using University resources or resources procured by the University, other than **standard resources** commonly provided to students or collaboration provided by the student's supervisor in the form of standard supervisory advice and guidance at the level that would be expected.

2.5 Isn't all research undertaken by graduate research students a form of "collaborative research activity"?

No. Under the definition of a research collaboration activity outlined above under **section 2.4**, "standard resources" include standard supervision, laboratory/office space or standard computer access (refer to the table in **section 2.11** below for further information).

This means that if you only access the standard resources of the University during the course of your research AND don't meet any other criteria of a collaborative research project, then you don't need to automatically assign your IP to the University.

In relation to supervision, it's worth emphasising that:

- Monash does not automatically treat supervision of a graduate research student as a collaboration as defined under the Regulations. Rather, supervision is seen as a teaching/instructional relationship, designed to assist you as a student to learn how to undertake research at a higher degree level, and produce an examinable research thesis.
- Collaboration is more than just standard teaching/instruction. It's worth emphasising, however, that discipline-specific understandings of research collaboration are relevant when understanding student IP in complex research environments such as those that you find in the experimental sciences.

2.6 Do any faculties have specific IP requirements?

Some faculties may have specific IP requirements given the nature of the research undertaken. Please check with your [faculty or institute](#) to confirm if it has any specific IP requirements.

2.7 Signing a Student Assignment Deed

For students enrolled in all Monash University campuses you are required to assign your IP to the University if your research is a collaborative research activity.

For all students enrolled in Monash University campuses besides Monash University Malaysia you will need to complete the Student Assignment Deed Poll, which will

appear automatically in the online IP form if you identified as completing a collaborative research project.

For all students enrolled at the Monash University Malaysia campus and completing a collaborative research project, you need to return an original, signed and witnessed copy of the Student Assignment Deed to:

- Research Management office, Monash University Malaysia, Level 5, Building 2, Jalan Lagoon Selatan, 47500 Bandar Sunway, Selangor Darul Ehsan, Malaysia (**Monash Malaysia students**)

You should consult with your Associate Dean (Graduate Research) if you and your supervisor disagree on whether an IP assignment is required.

2.8 Seeking independent advice on intellectual property

As student, you should seek your own independent legal advice regarding the assignment of intellectual property. The [Monash Postgraduate Association](#) provides access to free legal advice if required.

2.9 Discussing intellectual property issues with your supervisors at the point of initial enrolment

You and your supervisors are required to complete the [Intellectual property and ethics form](#) as a pre-condition of your enrolment into your degree. A link to this form is included in your letter of offer.

It's important to emphasise that the University can't process your enrolment (or scholarship, where relevant) unless you have completed this form and it has been supported by your main supervisor.

The [Intellectual property and ethics form](#) is meant to help:

- draw your attention to the concept of IP and confidentiality;
- develop an awareness of rights and responsibilities in relation to intellectual property and confidentiality;
- encourage discussion between supervisors and a student on IP and confidentiality; and
- provide a guide to the steps involved when someone other than the student has a claim to rights in the IP generated by the student. For example, this form can be used as a starting point for supervisors and research master's students to consider how to approach obtaining copyright permission for any third-party works they might use in their thesis.

In the preliminary planning stages of your research, it may not always be immediately obvious whether you will be required to assign your IP to the University. If you are not sure, you will be able to note this down on the [Intellectual property and ethics form](#). But this is another good reason for you to continually speak to your supervisor/s about IP. IP is also reviewed annually through the milestone review process. (See below).

2.10 Reviewing intellectual property issues at progress milestones

As part of the requirements of progress milestones such as Confirmation, the Progress Review / Mid Candidature Review and the Final Review / Pre-Submission Seminar, your Milestone Review Panel will revisit the issue of IP to see if any of your circumstances have changed since the last review and if IP assignment is required.

See the [Graduate Research Progress Management Procedures](#) for details on the purpose and aim of each milestone.

2.11 Examples of collaborative research activities

In many research areas, particularly those within the so-called STEM disciplines (of Science, Technology, Engineering and Mathematics), your research may form part of a larger continuum of research involving multiple researchers, sometimes spanning over many years.

In these cases, you benefit from the data gathering, resources and expertise already applied to the research area and your research is one aspect of a larger research project. In many cases third party funding is also involved.

These are the circumstances that are likely to mean you must assign IP to the University.

The table below is designed to help you better understand what constitutes a collaborative research activity:

Collaborative Research Activity	Example	Usual time for signing Deed
A research project undertaken by more than one person.	A research collaboration between the University and another university or research institute which the student's research project contributes to. OR A research project involving other staff or students of the University.	Prior to commencing research on the project.
A research project that is subject to an agreement with a third party under which the University has obligations relating to intellectual property.	An agreement with persons, such as an external body funding the research, may state that intellectual property arising from the project is owned by or licensed to the funding body. The student assigns IP to the University to enable it to pass to the funding body. So if a mining company is	When the agreement term relating to intellectual property is identified.

	<p>funding research into a device which detects weaknesses in railway tracks, on condition it owns the research outputs, student outputs on this research must be assigned to the University.</p>	
<p>A research project based on a concept or proposal developed by a member of staff, affiliate or third party, or, collaboratively by the student and a member of staff, affiliate or third party other than one which the student has independently developed and the research which the student will independently undertake.</p>	<p>A staff member receives a research grant for a research project and the student's research project arises from the concept or proposal in the grant application. It does not apply where, after learning about a staff member's published research, the student comes up with a new (though related) research concept or proposal.</p>	<p>Prior to commencing research on the project.</p>
<p>A research project undertaken using University resources, other than standard resources or resources procured by the University commonly provided to students, or collaboration provided by the student's supervisor in the form of standard supervisory advice and guidance at the level that would be expected.</p>	<p>The University's contribution must exceed what the student could normally expect by way of resources to complete enrolment (i.e. more than standard supervision, laboratory/office space or standard computer access).</p> <p>Examples may include a particular machine or instrument purchased by the University enabling the student to undertake the project, a non-standard enzyme or reagent that may be necessary for the student to perform experiments, or hospital owned patient data that may need to be provided for a student project that may only be accessed by a medically qualified University employee.</p>	<p>When the additional resources are identified as needed and to be provided for by the University.</p>

In other circumstances, you may choose to assign your IP to the University. For example, in the event that your research outputs have commercialisation potential, the University can facilitate negotiations with other parties during a commercialisation process if you have assigned your IP to the University.

2.12 Other examples where assignment of Intellectual Property and Licensing may occur

You may be required to assign ownership of other types of intellectual property created from your research at Monash University.

Assignment

Journal articles

When a journal accepts a paper for publication, the author is often required to assign copyright in the paper to the journal. For the author the benefit of publication is dissemination of the author's ideas to the research community and peer review. The journal wants the safety of owning the IP to avoid legal problems, should the paper be published elsewhere.

Conference paper

If a paper is presented at a conference, the author might be asked to assign copyright in the paper to the conference organisers so they may publish the paper in the conference proceedings.

Publisher

When a publisher accepts a work, for example a thesis, for publication as a book, the author would be asked to sign a contract under which the publisher agrees to pay the author a royalty percentage in return for an assignment of copyright in the manuscript.

However, journals, conference bodies and publishers are increasingly prepared to accept a licence to publish a work rather than a full assignment.

Licensing

Licensing allows, for example, the licensee to publish the work as a book or in a particular issue of a journal or in conference proceedings while the author retains ownership of the copyright. The purposes for which the work may be used are mutually agreed upon in the licence agreement.

The licence may be either exclusive or non-exclusive. For example, a licence to publish a book would be exclusive in respect to the first edition. If the publisher wanted to publish a second edition, it would be necessary to renegotiate the licence. When a licence is non-exclusive, the IP owner may grant more than one licence at the same time, for example a licence to use patented technology or to use a database.

In some scholarship agreements with outside sponsors, the University retains ownership of the intellectual property generated by the joint project (excluding the copyright in your thesis) and grants the external partner an exclusive or non-exclusive right to use the work.

2.13 Legal obligation to transfer IP rights

There may be a legal obligation imposed by law or by a contract for IP rights to be assigned or licensed. That obligation may arise under a contract to which you as a

student are not a party, because the University avoids students being party to such agreements.

2.14 Collaborative research activities undertaken with a third party

The University's [*Code of practice for supervision of doctoral and research master's students'*](#) reminds supervisors that a student's research program must not be unreasonably influenced by political, commercial or industrial factors. That is, a thesis examination may not be delayed by IP issues. If a thesis contains commercially sensitive material, examiners will be required to sign a confidentiality agreement so that the examination may proceed without delay.

Similarly, publication of findings arising from the thesis may not be delayed beyond the time-frame set by the Graduate Research Committee (GRC). As each student has both a right and a responsibility to promote intellectual enquiry and to disseminate knowledge through publication of their research, GRC has ruled that publication should not be delayed beyond 12 months.

If as a student you are considering becoming involved in a collaborative project, you should be fully informed by your supervisor, in writing, of any particular conditions that could either restrict disclosure or affect the extent to which communication with colleagues is possible (e.g. publication) during the course of the work and on its completion.

You should carefully consider the advantages and disadvantages of being involved in an external collaboration where restrictions are likely to be imposed on the way the research is carried out and how the findings are reported. You can seek independent advice on this. (See **6.2.8 Seeking independent advice on intellectual property** above).

While you may sign a contractual agreement or deed with the University, you should not sign a contract directly with the sponsor or other third party. The University undertakes this responsibility on your behalf. Normally, you then complete a Student Assignment Deed (see **6.2.7 Signing a Student Assignment Deed** above).

Template agreements are available for use by your supervisor. Where an agreement is required, your supervisor should first contact Monash Graduate Research Office on gr-governance@monash.edu advice on accessing these templates.

2.15 Related Student Issues

2.15.1 Confidentiality agreements

Researchers and graduate research students are often required to sign a confidentiality agreement, sometimes called a non-disclosure agreement. The agreement will contain a definition of the confidential information which one party (the discloser) wants to protect.

The definition might range from a description of specific data which the discloser intends to provide to a more general definition designed to cover any confidential

information which the receiver comes across while working at the discloser's premises. Should the receiver fail to maintain confidentiality, the discloser would be able to take action for breach of agreement/confidence and, if successful, to recover damages.

2.15.2 Authorship, attribution and publication

When you first commence your research, it is not always clear how much or what types of third-party content you will eventually reproduce in your thesis. That's why it's important that you and your supervisory team begin discussing copyright permissions from the outset, including planning and managing the potential costs of applying for such permissions.

Authorship matters apply to you when you participate in the creation of any research outputs or publications arising from your research conducted as a student. These may be in addition to a traditional thesis or may form part of a thesis including published works. (For further information, on Thesis Including Published Works, see the relevant [guidelines](#)).

Sections 4 and 5 of the [Australian Code for the Responsible Conduct of Research](#) outline all researchers' responsibilities in relation to publication, attribution and authorship. You should also refer to the University's [Research Outputs and Authorship Policy](#) and [Authorship Policy](#).

2.15.3 Vanity and predatory publishing

Vanity publishing can be defined as the practice of the author of a book or article paying the costs of its publication. Publication of this type is widely regarded as inappropriate for scholarly work.

Predatory publishers reportedly engage in various unethical practices including the charging of fees without previous advice that this would occur.

The University Library provides comprehensive [advice about vanity and predatory publishing](#).

2.16 Additional Resources for you as a student

- [Assignment and Licensing](#)
- [Authorship](#)
- [Background Intellectual Property](#)
- [Confidentiality](#)
- [Copyright](#)
- [Patents](#)
- [Publication](#)
- [Tips on seeking copyright permissions](#)

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