

INTELLECTUAL PROPERTY: COMMERCIALISATION REVENUE SHARING PROVISIONS AND DISPUTE RESOLUTION POLICY

SCOPE

- All staff
- All students
- All affiliates

POLICY STATEMENT

1. Commercialisation and Revenue Sharing

- 1.1 Commercialisation and Participation Revenue received by Monash University (the University) will be shared with eligible staff, students and affiliates in accordance with the revenue sharing arrangements documented in this policy.
- 1.2 Eligibility of staff, students and affiliates to participate in sharing of Commercialisation Revenue is based on their status as a Creator of Monash University IP the subject of successful commercialisation, or as a Creator or Contributor to IP owned by a Participation Entity, and not as payments for services rendered or as a direct or indirect consequence of employment status. Accordingly:
 - 1.2.1 Revenue sharing payments will be distributed to successful Creators of Monash University IP or Participation Entity IP the subject of commercialisation for such time as Monash University receives relevant commercialisation revenue, irrespective of the then status of the Creator or their involvement in the commercialisation of the Monash University IP.
 - 1.2.2 Revenue sharing payments made to eligible staff will not form part of that staff member's superannuable salary paid by the University.
- 1.3 Any contractual arrangement making provision for the sharing of commercialisation revenue will prevail over the revenue sharing arrangements documented in this policy.

2. Revenue Sharing Provisions

- 2.1 Net Revenue received by the University will be shared as provided for in this policy.
- 2.2 For Monash University IP, in respect of a patentable invention or a patent:
 - 2.2.1 The Creator of the Monash University IP will receive 33 $\frac{1}{3}$ % of the Net Revenue.
 - 2.2.2 Where there is more than one Creator, the said 33 $\frac{1}{3}$ % share of Net Revenue shall be apportioned equally between the Creators of the Monash University IP unless all Creators agree in writing to a different apportionment.
 - 2.2.3 Where the Creator agrees, or where there is more than one Creator, all of the Creators of the Monash University IP agree, the said 33 $\frac{1}{3}$ % share of Net Revenue will be apportioned between the Creator/s and any one or more Contributors in the proportions agreed by the Creator/s.
 - 2.2.4 The Faculty of the Creator of the Monash University IP will receive 33 $\frac{1}{3}$ % of the Net Revenue for inclusion in the relevant Faculty Incentive Fund or equivalent.
 - 2.2.5 Where there are multiple Faculties involved then the share shall be distributed between the Faculties in the same proportions as for the Creators.
 - 2.2.6 Where agreement is reached under paragraph 2.2.2 of this policy, then the share shall be distributed between the relevant Faculties in the same proportions as between the Creators and Contributors.
 - 2.2.7 In the case where one or more of the Creators were not employed in or enrolled through a Faculty, then the Provost will pass on the share of Net Revenue to the organisational unit of Monash University where the Creators were employed or enrolled at the time of creation of the Monash University IP.
 - 2.2.8 The University will receive the remaining 33 $\frac{1}{3}$ % of the Net Revenue.

- 2.3 For Monash University IP in respect of an Other Right, which may include rights in a copyright work, registered design, registered plant breeder's right, registered circuit layout, 'know how' or Tangible Research Materials:
- 2.3.1 With the approval of the Deputy Vice-Chancellor (Enterprise) and after considering advice from the Director, Monash Innovation, an agreement may be entered into between the Creator/s of Monash University IP and the University providing for the Creator/s to receive a share of the Net Revenue, provided that 66⅔% of Net Revenue is ordinarily reserved for the University and/or the Faculty of the Creator. The Creator/s will receive a share of Net Revenue according to the terms of that agreement, if any.
- 2.3.2 In reaching an agreement, regard will be had to the following considerations:
- 2.3.2.1 the relative contribution of the Creator/s to the Other Right and the contribution of the University;
 - 2.3.2.2 the relative contribution of any person agreed by the Creator, or where there is more than one Creator, all of the Creators, to be a Contributor to the Other Right;
 - 2.3.2.3 where the Other Right comprises or includes Tangible Research Materials, that any allocation of Net Revenue to the Creator/s will ordinarily be allocated to the University fund available for research activity in the laboratory of the Creator/s, rather than directly to the Creator/s;
 - 2.3.2.4 that materials used in the development and delivery of any Monash University course, unit or education are not to be the subject of revenue sharing;
 - 2.3.2.5 the desirability of providing the Creator/s with the opportunity to make a submission on revenue sharing;
 - 2.3.2.6 the need for any revenue sharing arrangement to be documented in an agreement;
 - 2.3.2.7 the need for the agreement to assign responsibility for implementation of the revenue sharing arrangement documented in the agreement.
- 2.4 For IP owned by a Participation Entity:
- 2.4.1 Where there are no external Creators, the Monash Creator of IP will receive 33⅓% of the Net Participation Revenue.
- 2.4.2 Where there are no external Creators and there is more than one Monash Creator, the said 33⅓% of Net Participation Revenue shall be apportioned equally between all of the Creators of the IP unless all Creators agree in writing to a different apportionment and the Monash Creators will receive a proportionate share of the 33⅓%.
- 2.4.3 Where there are no external Creators and the Monash Creator agrees, or where there is more than one Monash Creator, all of the Monash Creators of the IP agree, the 33⅓% of Net Participation Revenue shall be apportioned between the Creator/s and any one or more Contributors in the proportions agreed by the Monash Creator/s and the Monash Creator/s will receive a proportionate share of the 33⅓%.
- 2.4.4 Where there are external Creators of IP, the said 33⅓% of Net Participation Revenue shall be apportioned equally between all of the Creators of the IP unless all Creators agree in writing to a different apportionment, and the Monash Creator/s will receive a proportionate share of the 33⅓%.
- 2.4.5 Where there are external Creators of IP and all of the Creators agree, the said 33⅓% of Net Participation Revenue shall be apportioned between all of the Creators and any one or more Contributors in the proportions agreed by both the University and external Creator/s and the Monash Creators and Monash Contributors will receive a proportionate share of the 33⅓%.
- 2.4.6 At least 66⅔% of the Net Participation Revenue will be split between the Faculty or Faculties and the University in proportion to their participation in the Participation Entity.
- 2.4.7 The balance of the 33⅓% of Net Participation Revenue not distributed to Monash Creator/s or Contributors will be distributed to the participating Faculty or Faculties and the University as per paragraph 2.4.6 above.
- 2.5 These revenue sharing provisions will be implemented by the Director, Monash Innovation.
- 2.6 Any dispute about any matter arising under this policy shall be dealt with according to the Intellectual Property Dispute Resolution Procedures

3. Resolution of disputes

- 3.1 To facilitate the fair and timely resolution of disputes about IP ownership or commercialisation revenue sharing, a dispute resolution procedure has been established.
- 3.2 Both informal and formal resolution of disputes will be dealt with according to the Intellectual Property: Dispute Resolution Procedure.

DEFINITIONS

Affiliate	A person who holds an adjunct, emeritus or honorary appointment at the University.
Commercialisation Revenue	The sum of any payments received by the University as a result of the commercial exploitation of IP which the University owns by operation of law or by virtue of an assignment under Part 5 of the Monash University (Vice-Chancellor) Regulations, that is directly related to Creation of IP and includes payments resulting from the holding of equity and the sale of equity or a product, provision of a licence, realisation of a royalty, assignment of the IP itself or howsoever otherwise.
Contributor	Any person whom the Creator agrees, or where there is more than one Creator for a particular IP Right, all of the Creators agree, in writing has significantly contributed to the IP Right and who it is agreed will share in the Net Revenue, which share will be the proportion agreed by all of the Creators in writing and subject to the limits in this policy.
Costs	<p>Costs (other than salary and associated costs) incurred by the University in relation to the commercialisation of Monash University IP associated with:</p> <ul style="list-style-type: none"> • the filing, prosecution, maintenance or defence of a registrable IP Right; • external advice (whether legal, patent attorney or other advice) about an IP Right or its commercialisation; • expenses incurred in drafting of a legal document or agreement related to an IP Right or its commercialisation; • expenses incurred in developing the IP Right for industry, consumers or potential users of the IP Right, other than expenses paid using funds derived from a non-recoverable grant provided by the University; • expenses incurred to maintain or update the IP Right; • costs paid from University funds allocated for the development of the IP Right, other than funds derived from a grant made by the University and designated as non-recoverable.
Creator	<p>a) for a patentable invention or a patent: each individual named as an inventor on a pending patent application or issued patent; and</p> <p>b) for copyright works: the author of the work or of a subject-matter other than a work, within the meaning of the Copyright Act 1968 (Cth);</p> <p>c) for a registered design: the person who created the design, within the meaning of the Designs Act 2003 (Cth);</p> <p>d) for a registered plant breeder's right: the breeder of the plant variety, within the meaning of the Plant Breeder's Rights Act 1994 (Cth);</p> <p>e) for a registered circuit layout: the person who makes the eligible layout, within the meaning of the Circuit Layouts Act 2989 (Cth);</p> <p>f) for 'know how': the person who developed the 'know how';</p> <p>g) for Tangible Research Materials: each original creator of the Tangible Research Materials.</p>
Designated Person	The person designated by the Vice-Chancellor under Part 5 of the Monash University (Vice-Chancellor) Regulations to receive notices from the creators of IP that has the potential to be commercialised.
Faculty	The faculty of Monash University which the Creator was employed in or enrolled through at the time of creation of the Monash University IP, and if no such faculty exists then the portfolio of the Provost of Monash University.
Net Revenue	The revenue received from the commercialisation of Monash University IP less all Costs and less payments to third parties in respect of commercialisation fees, revenue or royalty share, funds received for research and expended on research, or funds received from a commercialising party subject to an obligation to use such funds to subscribe for shares in the commercialising party.
Intellectual Property or IP	All intellectual and industrial property rights conferred by statute, at common law or in equity, including patents, inventions, research data, designs, copyright, trademarks, brand names, product names, domain names, rights in circuit layouts, plant breeder's rights, trade secrets and any other rights arising from confidential information, and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration.

IP Right	A patent or an Other Right.
Monash University IP	Any IP Right which the University owns by operation of law or by virtue of the assignment under Part 5 of the Monash University (Vice-Chancellor) Regulations or otherwise.
Net Revenue	The revenue received from the commercialisation of Monash University IP less all Costs and less payments to third parties in respect of commercialisation fees, revenue or royalty share, funds received for research and expended on research, or funds received from a commercialising party subject to an obligation to use such funds to subscribe for shares in the commercialising party.
Other Right	A copyright work, registered design, registered plant breeder's right, registered circuit layout, 'know how' or Tangible Research Materials.
Participation Entity	An external entity with which the University participates in research where revenue is paid based on participation in the entity or other contractual arrangement, rather than being linked to inventorship (e.g. a Cooperative Research Centre - CRC)
Participation Entity IP	IP created or otherwise held in the name of the Participation Entity.
Participation Revenue	The sum of any payments received by the University as a result of the commercial exploitation of Participation Entity IP, including payments resulting from the holding of equity and the sale of equity.
Tangible Research Materials	Materials, substances, or articles produced in the course of conducting research at or under the auspices of Monash University.

GOVERNANCE

Supporting procedures	Intellectual Property: Dispute Resolution Procedure
Supporting schedules	Nil
Associated policies	Copyright Compliance Policy Authorship Policy
Related legislation	Monash University Act 1958 (Vic)
Category	Operational
Approval	Vice Chancellor's Executive Committee 25/02/2019 02/2019, Item 12
Endorsement	Senior Director, Monash Innovation 25/02/2019
Policy owner	Deputy Vice-Chancellor (Enterprise)
Date effective	14 September 2017
Status	Current and in effect
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