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Supporting OER engagement at Australian Universities

An overview of the intellectual
property rights, copyright and policy
considerations for OER



Image by DiscourseMarker



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Table of Contents

Contents

Introduction and Overview	3
Structure	4
Open Educational Resources (OER)	5
Some Background—about Intellectual Property	5
Copyright.....	6
Copyright ownership.....	6
The rights of copyright owners	7
Moral rights.....	7
Open Content Licensing	8
About Creative Commons licences	9
Creative Commons licence elements and their value for OER	10
The Creative Commons licences	11
Open content licensing and OER.....	12
Developing OER at Australian universities.....	14
University content - what is it?	14
University content - who owns it?	15
Dealing with personal rights in university OER.....	16
Student copyright	18
Third party content	18
Repurposing university generated content as OER	19
Policy and Policy Development.....	20
Developing policy for OER in higher education	21
New, OER-supportive policy	21
Making a start	22
Managing risk.....	23
Guidelines for OER policy development	23
Finding out more.....	26
Conclusion.....	27
References	28
Appendix Institutional Policy and Guidelines that relate to OER	31

Introduction and Overview

Australian universities and learners are increasingly participating online. The use of web-based resources to support face-to-face learning or to deliver blended or fully online courses is mainstream; however, uncertainty persists about ownership of content and how it may be reused.

Open educational resources (OER) offer educators, educational institutions and learners the opportunity to participate in an environment that supports teaching and learning through collaboration and the sharing of resources. Through OER, copyright owners can assert the rights available to them under copyright to release content in a structured legal framework that allows flexibility, equity and sharing. Clear licensing, an essential element of OER makes it apparent to those using or repurposing resources that they have the right to do so.

Universities and university creators developing OER, or repurposing existing university-generated content as OER need to consider intellectual property rights, particularly copyright and personal rights, from the outset. Australian universities, through the delivery of their educational programs, have historically relied on copyright law to protect content generated by their employees in order to control its access and restrict its reuse. Engagement in OER requires university educators, administrators and content creators to review these arrangements, because under the terms of OER, users are granted rights usually reserved for the owners of copyright. Further, a university's ability to rely on the educational and free copyright exceptions when using copyright from a third party is not always available to them when the content is released openly as OER.

This document provides an overview of the key intellectual property rights and licensing considerations in OER. In preparing this document, the online available intellectual property policies of Australian universities were reviewed to assess how these documents currently address the ownership of content created and developed by university employees. Input on existing and emerging practices was sought from Australian universities, through feedback provided by key stakeholders during the 'Open Educational Resources National Symposium' held in Sydney in August 2012 Scott, which was a deliverable of the Office for Learning and Teaching funded project titled: "Adoption, use and management of Open Educational Resources to enhance teaching and learning in Australia".

This document offers recommendations to assist decision makers and managers at Australian universities to develop policy and processes, which support university and individual engagement in OER.

Much is currently being written on the subject of OER, so links are provided to sites, OER communities and resources supportive of OER.

Finally, this document provides information but is not legal advice.

Structure

This document is divided into the following sections:

- **Introduction and Overview**
provides an overview of the purpose of this document.
- **Open Educational Resources (OER)**
provides an explanation of OER and the definition of OER used in this document.
- **Some Background – About Intellectual Property**
provides an overview of intellectual property and the main rights considerations in OER, including copyright, moral rights and performers’ rights.
- **Open Content Licensing**
provides an overview on open content licensing, particularly the Creative Commons licences, and how open content licensing supports OER.
- **Developing OER at Australian Universities**
provides an overview of the way in which universities currently manage ownership of university content and how this may apply to OER. This section also provides guidance on managing personal rights in OER and the use of third party copyright.
- **Policy and Policy Development**
outlines the role of policy to support OER development at universities.
- **Finding Out More**
provides links to resources and websites that are supportive of OER development.
- **Appendix —Institutional Policy and Guidelines that relate to OER**
provides an overview of how copyright ownership is currently addressed in intellectual property policies at Australian universities.



Open Educational Resources (OER)

Open educational resources (OER) are open, adaptable educational resources which emphasise the transformative possibilities of content, particularly digitally created and distributed resources.

Open: Content that is free to access, including from print sources and content that is freely available on the web, is not necessarily free to repurpose. The key characteristic of OER, which differentiates it from other web content and other educational resources, is that it incorporates a *licence*. The licence allows a resource to be reused and changed without first needing to request permission from the copyright owner.

Educational: For universities, the educational value of OER is in the subject relevance and pedagogical ‘fit’ of content to their teaching programmes. This can include using and repurposing existing OER as well as releasing university-generated content as OER for use in university programmes and for sharing more widely.

Resources: This is any content that has value for reuse in an educational context – from an image to a movie, a journal article to a full course. Because OER are licensed under terms that allow dissemination and reuse in new ways, it follows that OER is released in formats that can easily be edited and used under permitted terms.

Various definitions of OER exist.¹ The definition of OER adopted by the project and used in this document was developed by the OER Foundation:

‘Open Educational Resources (OERs), are educational materials which are licensed in ways that provide permissions for individuals and institutions to reuse, adapt and modify the materials for their own use. OERs can, and do include full courses, textbooks, streaming videos, exams, software, and any other materials or techniques supporting learning.’

Some Background—about Intellectual Property

Intellectual property or ‘IP’ is a broad category used to describe a number of forms of legal protection afforded to intellectual creations of individuals and organisations. In Australia, IP is usually considered to include patents, copyright, trademarks, designs, circuit layout rights, plant breeder’s rights, domain names and confidential information. The forms of legal protection within IP have diverse origins and operate quite differently to each other. Patents, for instance, originated in the 15th century in Venice and protect the function or working of an invention, while copyright originated in the 18th century in England and protects the expression of an idea.

Intellectual property rights are claims that relate to the ownership, provenance and attribution of works. Unless intellectual property rights are adequately addressed, they can present significant barriers to the release and open sharing of OER.

¹ Definitions of OER adopted by OER initiatives worldwide can be found at:
http://wiki.creativecommons.org/What_is_OER

This document addresses copyright, as well as moral and performers rights, which are personal rights.

Copyright

In Australia, copyright law is set out in the *Copyright Act 1968* (Cth).

Copyright is a set (or 'bundle') of legal rights that attach to an original work when it is created. These rights permit the owner of copyright to do certain acts in relation to the work (such as making copies of it). The rights of a copyright owner are referred to as 'exclusive rights' because the copyright excludes others from doing the same acts that the owner may do unless the owner gives them permission.

Copyright is a property right which can be owned by individuals, organisations and governments. It can be sold or licensed in the same way that other forms of property can be.

Copyright protects a very wide range of materials in different formats, including:

- literary works, such as books journal articles;
- photographs and other pictures ('artistic works');
- sound recordings; and
- video and multimedia works.

Copyright ownership

The basic principle of copyright ownership is that the author or creator of the work owns the copyright.² As the owner of a copyright, the author or creator may sell or licence it. This basic ownership rule applies unless there is an agreement (contract) to the contrary under which the copyright is to belong to another individual or organisation.

Generally an employer owns copyright in all works that are created or compiled by their employee in the ordinary course of the employee's duties and in pursuance of the terms of employment. This rule of ownership can be changed by the terms of an agreement between the employer and employee which grants copyright ownership to the employee or some other party (such as a research funding organisation).

Factors that may be relevant to whether works are created or compiled 'in pursuance of the terms of employment' are:

- whether the employee was engaged to perform the task that results in the work being created;
- whether the employee creates work with the understanding and intention that the employer will own copyright; and

² The sections relating to copyright, and in particular copyright ownership are derived from: Fitzgerald, A., Pappalardo K. & Austin A. (2008) *Practical Data Management: A Legal and Policy Guide*, OAK Law Project and Legal Framework for e-Research Project. Retrieved from http://eprints.qut.edu.au/14923/1/Microsoft_Word_-_Practical_Data_Management_-_A_Legal_and_Policy_Guide_doc.pdf. Licensed under an Australian Creative Commons [AttributionNonCommercial-ShareAlike 2.5 Licence](#)

- whether the works were created or compiled during the employee’s usual work hours (or by contrast, in the employee’s own time).

Where the author or creator of the work is an independent contractor rather than an employee, the independent contractor generally owns copyright in any works that they create or compile under the contract for services. Again, this rule can be - and often is - varied by the terms of the agreement between the independent contractor and the contracting institution that:

- state that any copyright material created or compiled by the independent contractor will be owned by the contracting institution; or
- require copyright to be assigned to the institution.

The rights of copyright owners

Copyright confers on the copyright owner the exclusive right to do certain acts in relation to the protected work. The copyright owner also has the exclusive right to authorise the doing of any of those acts by someone else, whether by sale (assignment) or by licence. Under section 31 of the *Copyright Act 1968* (Cth), the copyright owner may authorise an individual or organisation to do any of the following acts:

- reproduce the work in a material form;
- publish the work;
- perform the work;
- communicate the work to the public;
- make an adaptation of the work (for example, a translation); and
- rent the work.

These rights come into existence automatically upon creation of the work, without any need to register them, and generally last for seventy years from the death of the author.

Moral rights

Moral rights are personal rights granted to the creator, author or performer (in this section ‘creator’) of a work that exist independently of copyright. These rights are intended to protect the honour and reputation of creators and the integrity of their work. As moral rights remain with the creator of a work and cannot be sold or transferred like a copyright they are not intellectual property, although in some cases a creator can give consent for their rights not to be observed.

Under Part IX of the *Copyright Act 1968* (Cth), creators of works have three primary moral rights:

- the right of attribution of authorship;
- the right not to have a work falsely attributed; and
- the right of integrity of authorship of a work. That is, the right not to have their work treated in a ‘derogatory manner’.

The first two rights are actually two sides of the same coin, that is, a right of *proper* attribution of authorship. Together they provide a creator with the rights to:

- be acknowledged as the creator of a work;
- prevent another person from falsely claiming to be the creator of the work;
- prevent the false attribution of other works to the creator; and
- prevent attribution to the creator of amended versions of the work not authorised by the creator.

The third right, that of integrity of authorship enables the creator to object to 'derogatory treatment' of the creator's work, including:

- amendments to the work; or
- the manner in which the work is presented.

'Derogatory treatment', in relation to a work (for example, an academic paper) means:

- doing anything that results in a material distortion of, the mutilation of, or a material alteration to the work that is prejudicial to the honour or reputation of the creator; or
- doing anything else in relation to the work that is prejudicial to the honour or reputation of the creator.

Under certain circumstances it may be reasonable to infringe the moral rights of a creator, for example, where there is an established industry practice for limited updating of works. However, circumstances of this kind are exceptional and should not be relied upon. It is always preferable to obtain written consent from the creator before doing any act which may infringe the creator's moral rights.

Open Content Licensing

While the protections offered by copyright laws are appropriate in many circumstances, these protections may unnecessarily prevent activities that the copyright owner wants to allow. A licence is a grant of permission from the copyright owner that permits others to exercise certain rights to use the copyright material without transferring ownership of copyright to another person.

The benefits include:³

- allowing others to circulate the work freely – potentially giving it a greater circulation than if a single group or individual retained an exclusive right to distribute;
- not forcing users to apply for permission every time they wish to circulate a copy of the work in question – which can be a time consuming affair, especially if the work has many authors;
- encouraging others to continuously improve and add value to a work;
- encouraging others to create new works based on or derived from the original work – e.g. translations, adaptations, or works with a different scope or focus.

³ From: *Open Knowledge Foundation* <http://www.opendefinition.org/guide?action=print>

A number of standard open content licences assist copyright owners to make their content available to others. These include:

- Creative Commons - <http://creativecommons.org/>
- Against DRM licence - http://en.wikipedia.org/wiki/Against_DRM_license
- GNU Free Documentation Licence - http://en.wikipedia.org/wiki/GNU_Free_Documentation_License
- Free Art Licence - http://en.wikipedia.org/wiki/Free_Art_License

Open content licences, attached to copyright material, serve to inform others how they may reuse, revise, remix, and redistribute content at no cost, and without the need to seek permissions. The most commonly used open content licences are Creative Commons licences.

About Creative Commons licences

Creative Commons (CC) is a world-wide project that encourages copyright owners to allow others to share, reuse and remix their material, legally.⁴ Creative Commons offers a range of royalty-free licences that creators can use to manage their copyright in the online environment, by building upon the 'all rights reserved' of traditional copyright to create a voluntary 'some rights reserved' system.

Creative Commons allows the copyright owner to choose from a number of licensing elements that can be used alone, or in combination, to form standard licences for open resources such as OER.

All CC licences include some common features, including:

- copyright ownership is not relinquished;
- author or creator must be attributed;
- users need to seek permission to use a resource in a way not covered by the nominated CC licence;
- copyright notice needs to be kept intact on all copies of the work;
- a copy of the licence should be published with the work or included as a link from any copies of the work;
- the licence is worldwide, non-exclusive and irrevocable, and
- copyright owners attach the licence to the copyright material so that the permissions given in the licence need only be given once.

Creative Commons licences have three layers:

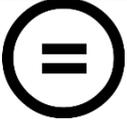
- the human-readable deed;
- the lawyer-readable legal code; and
- the machine-readable metadata.⁵

When using a Creative Commons licence, the copyright owner can select which of the licence elements best suits.

⁴ Content here is derived from the Australian Creative Commons site: <http://creativecommons.org.au>, particularly <http://creativecommons.org.au/content/licences-explained-content-creators.pdf>. Licensed under [Creative Commons Attribution Licence](#)

⁵ For further information, see <http://wiki.creativecommons.org/Developers>

Creative Commons licence elements and their value for OER

CC element and description	OER context
 <p>Attribution BY</p> <p>This element applies to every Creative Commons licence. Whenever a work is copied or redistributed under a Creative Commons licence, the original creator (and any other nominated parties) must be credited and the source linked to.</p>	<p>The creator of the resource is able to state how they want to be attributed. The user should attribute the resource clearly in the form determined by the creator of the work either with the resource itself, or referenced with other credits at the end.</p>
 <p>Noncommercial NC</p> <p>Allows others to copy, distribute, display and perform the work for non-commercial purposes only.</p>	<p>Some uncertainty exists about what constitutes a non-commercial use and concerns that CC non-commercial may be incompatible with other CC licences.⁶ OER authors or projects should carefully consider the implications of including the CC non-commercial element in their licence and bear in mind that most OER funding bodies recommend avoiding this restriction.⁷</p>
 <p>No Derivative Works ND</p> <p>Lets others distribute, display and perform only verbatim copies of the work. They may not adapt or change</p>	<p>Under the terms of OER, copyright owners need to allow others to 'reuse, adapt and modify the materials for their own use'. Any CC licence that includes a No Derivative Works element or CC ND does not permit the necessary rights. These licences allow redistribution of a work in its current form, but not adaptations or modifications of the work. An educational resource which includes a CC ND licence element could not, for example, be translated into a</p>

⁶ See:

<http://www.oerafrica.org/copyright/CreativeCommonsIntroduction/Criticismsofthenoncommercialclause/tabid/1282/Default.aspx>.

⁷ See pages 10 and 11 of: South African Institute for Distance Education – OER Africa (2011). *OER Copyright and Licensing Toolkit: A guide for higher education institutions interested in creating and using Open Educational Resources*.

Johannesburg: Saide. Retrieved from <http://www.oerafrica.org/Copyrightandlicensingtoolkit/tabid/1781/Default.aspx> Licensed under a [Creative Commons Attribution Licence](#).

the work in any way	new language for a local use, without specific permission from the copyright owner. Nevertheless there may be some instances where a including a 'No Derivative Works' licence element is important to retaining the integrity of a work, for example a medical diagram or a poem.
 <p>Share Alike SA</p> <p>Allows others to remix, adapt and build on the work, but only if they distribute the derivative works under the same the licence terms that govern the original work.</p>	<p>The CC Share Alike Licence element or CC SA, requires that all reproductions or derivative works from the original copyright work are released under the same or similar licence conditions. While CC SA content can serve to prevent educational resources from being used for commercial benefit, an unintended consequence is that CC SA content can be unnecessarily restrictive for <i>all</i> users. For example, OER licensed as CC SA, cannot be incorporated in content (including other OER), licensed under the more generous attribution or CC BY licence, because the CC BY licence does not require the user of the content to share alike.</p>

The Creative Commons licences

The Creative Commons elements can be used to create the six core Creative Commons licences listed here starting with the most liberal licence and ending with the most restrictive licence.



Attribution **CC BY**

This licence lets others distribute, remix and build upon a work, even commercially, as long as they credit the original creator/s (and any other nominated parties). This is the most accommodating of the licences in terms of what others can do with the work.



Attribution-Share Alike **CC BY-SA**

This licence lets others distribute, remix and build upon the work, even for commercial purposes, as long as they credit the original creator/s (and any other nominated parties) and license any new creations based on the work under the same terms. All new derivative works will carry the same licence, so will also allow commercial use.

In other words, you agree to share your materials with others, if they will share their new works in return. This licence is often compared to the free software licences, known as 'copyleft.'



Attribution-No Derivative Works **CC BY-ND**

This licence allows others to distribute the work, even for commercial purposes, as long as the work is unchanged, and the original creator/s (and any other nominated parties) are credited.



Attribution-Noncommercial **CC BY-NC**

This licence lets others distribute, remix and build upon the work, but only if it is for non-commercial purposes and they credit the original creator/s (and any other nominated parties). They don't have to license their derivative works on the same terms.



Attribution-Noncommercial-Share Alike **CC BY-NC-SA**

This licence lets others distribute, remix and build upon the work, but only if it is for non-commercial purposes, they credit the original creator/s (and any other nominated parties) and they license their derivative works under the same terms.



Attribution-Noncommercial-No Derivatives **CC BY-NC-ND**

This licence is the most restrictive of the six main licences, allowing redistribution of the work in its current form only. This licence is often called the 'free advertising' licence because it allows others to download and share the work as long as they credit the original creator/s (and any other nominated parties), they don't change the material in any way and they don't use it commercially.

Open content licensing and OER

The current definition of 'open content' on the OpenContent website is 'content that is licensed in a manner that provides users with the right to make more kinds of uses than those normally permitted under the law - at no cost to the user.'⁸

Open content⁹ has been used to develop alternative routes to providing access to higher education. Projects and organisations such as MIT OpenCourseWare¹⁰, Coursera¹¹ and the Khan Academy¹² promote learning through open content. However, while many of the resources and courses available are open to *access* and use, they are not always open to being *reused* in ways compatible with OER, such as by revision, translation and sharing.

OER, by definition, requires more rights for the user than simply being 'open.'

As noted in The Cape Town Open Education Declaration: *Unlocking the promise of open educational resources*:¹³

'...open educational resources should be freely shared through open licences which facilitate use, revision, translation, improvement and sharing by anyone. Resources should be published in formats that facilitate both use and editing, and that accommodate a diversity of technical platforms. Whenever possible, they should also be available in formats that are accessible to people with disabilities and people who do not yet have access to the Internet.'

⁸ Wiley, D. *Open Content*. <http://OpenContent.org/definition>

⁹ See: http://ask-oss.mq.edu.au/index.php?option=com_content&task=view&id=23&Itemid=37 for an explanation of open content.

¹⁰ ocw.mit.edu/index.htm

¹¹ www.coursera.org

¹² www.khanacademy.org/

¹³ Cape Town Declaration. (2007). Retrieved from <http://www.capetowndeclaration.org/read-the-declaration> This work is licensed under a [Creative Commons Attribution 3.0 Licence](https://creativecommons.org/licenses/by-nc-sa/4.0/).

The fewer copyright restrictions are placed on the user of a piece of content, the more open the content is. The primary permissions or usage rights open content is concerned with are expressed in the '4Rs Framework'.¹⁴

- Reuse - the right to reuse the content in its unaltered / verbatim form (e.g., make a backup copy of the content).
- Revise - the right to adapt, adjust, modify, or alter the content itself (e.g., translate the content into another language).
- Remix - the right to combine the original or revised content with other content to create something new (e.g., incorporate the content into a mashup).
- Redistribute - the right to share copies of the original content, your revisions, or your remixes with others (e.g., give a copy of the content to a friend).

These are all attributes for OER.

Universities creating OER or repurposing university resources as OER could use one of the following Creative Commons licences to meet OER principles and conditions:¹⁵

- Attribution-only (CC BY) licence; or
- Attribution-Share-alike (CC BY-SA) licence.

Both will allow:

- translation of OER into different languages;
- adaption of OER for different learning settings;
- evolution and updating of OER through peer and student editing; and
- easy discovery of CC licensed content on the web for use in OER.

The Attribution-only (CC BY) licence most easily supports the principles of OER and is recommended by most OER projects.

Licence compatibility

Because there are many different types of open content licences available, and many possible combinations, content licensed for OER or intended for incorporation into OER is not automatically compatible with other OER. When combining content from various sources, including content with differing Creative Commons licences, creators of OER can use compatibility charts and licence wizards¹⁶ to ensure they do not breach licence conditions when incorporating others' content.

¹⁴ From: Wiley, D. *Open Content*. <http://OpenContent.org/definition>

¹⁵ Creative Commons Australia homepage: <http://creativecommons.org.au/> For more information see: http://wiki.creativecommons.org/Frequently_Asked_Questions and http://wikieducator.org/OER_Handbook/educator/License/Creative_Commons. Licensed under [Creative Commons Attribution Share-Alike Licence](#).

¹⁶ See the example at: <http://www.oerafrica.org/FTPFolder/Website%20Materials/UnderstandingOER/licwiz/english.html>

Ported or unported?

Some CC licences refer to being ported and unported. 'Ported' licences are localised and intended for a particular country or jurisdiction, so where the target audience for OER is local, a ported licence is generally recommended.¹⁷

Before choosing a licence for their OER, Australian universities should consider the benefits of ported and unported licences, and may want to seek further advice.¹⁸ Importantly, all Creative Commons licences are public, used worldwide and clearly state the conditions under which a work may be used.

Developing OER at Australian universities

An educational institution releasing content as OER will need to ensure that it owns, or has permission to use, all the content and make it available under an appropriate licence. Particular care must be taken to ensure that all necessary personal rights permissions and consents are also obtained.

University content - what is it?

Australian university intellectual property policies typically distinguish between types of work employees create in the course of employment, including:

Scholarly or creative output:

This generally means formalised, completed works such as:

- books and book chapters
- journal articles
- conference papers
- creative work, such as a musical compositions or art work

Educational resources

These are also referred to as teaching material or course materials and apply to copyright material in any medium that is used for the purpose of instruction in a university course. Including:

- Lesson plans
- Reading lists
- Assessments and exams
- Lecture recordings
- Study materials
- Multimedia presentations
- Software

¹⁷ This is explained in more detail at:

<http://www.oerafrica.org/copyright/CreativeCommonsIntroduction/PortedandUnportedLicenceCC/tabid/1281/Default.aspx>

¹⁸ Creative Commons Australia is the affiliate that supports and administers the Australian Creative Commons resources and licences. See <http://creativecommons.org.au/about/ccaustralia>

Staff or administrative materials

These include material or documentation that has been developed for the purposes of university administration, evaluation, marketing and course development such as:

- Promotional brochures
- Exams
- Policies and procedures
- Reports and business processes
- Course and subject outlines
- Web sites

University content - who owns it?

Australian universities currently manage ownership of copyright (see Appendix) using one or more of the following models:

University asserts copyright ownership

Many Australian universities assert copyright ownership over content, particularly educational resources and staff materials, developed by employees in the course of their employment. This model has traditionally been used to protect organisational investment in the development, maintenance and ongoing use of university resources, even during employee turnover.

By retaining copyright, a university controls how content may be used and licensed, including:

- restricting access;
- release of content by publication or online communication; or
- engagement in commercial or collaborative projects.

Under this model for OER:

- a university can assert the right as copyright owner to licence and release OER; and
- university creators wanting to independently release, as OER content they have developed under the terms of employment, would need clearance from their university.

University and creator share rights

Ownership of content developed by employees in the course of their employment is managed in some Australian university IP policies through a non-exclusive sharing arrangement.

The sharing arrangement can be one of the following:

- the university claims copyright ownership but grants certain non-exclusive rights to the creator; or
- the university assigns ownership to the creator, but retains certain non-exclusive rights, such as the right to reproduce and communicate the work online for non-commercial purposes via an open access institutional repository.

The non-exclusive sharing of rights for university authored content:

- can serve a university by providing certainty for the delivery of courses and enabling the university to enter into agreements with third parties; and
- allows creators to use and reuse the content in some situations, for example in future employment, or for publication.

Under this model for OER:

- a university should assess whether the non-exclusive licence arrangement with an employee (or past employee) permits the university to release their work under open licence arrangements; and
- creators should seek certainty from their institution before releasing educational resources developed for the university to determine:
 - whether their non-exclusive licence arrangement with the university permits them as creator to release their work as OER; and
 - if so, whether the university requires acknowledgement in connection with the OER.

University does not claim copyright ownership

Ownership of copyright at Australian universities is sometimes retained by the creator(s) of a work. This may apply to an employees' scholarly or creative work and also usually applies to student work. This is achieved by:

- university does not assert ownership of copyright; or
- university assigns copyright to the creator of the work.

Under this copyright arrangement:

- a university is not able to control how the content may be used and licensed; and
- university creators can enter into new agreements, such as publisher agreements.

Under this model for OER:

- a university wishing to use the work in any way, including as OER, will need to seek permission from the copyright owner; and
- university employees can independently release, as OER, content they have developed unless they have assigned copyright to a publisher or other party.

Dealing with personal rights in university OER

Moral rights considerations

As moral rights (discussed earlier in this document) are held by individuals, not by organisations or institutions, these are usually addressed in employment contracts or IP policies.

Australian university IP policies deal with moral rights in various ways, including that the university:

- agrees to observe any obligations in relation to moral rights as provided in the *Copyright Act 1968* (Cth);
- undertakes to take 'reasonable steps' to ensure that the moral rights of originators are respected, including the originator's right to dissociate from the development or modification of a work; and
- reserves the right to seek a moral rights consent¹⁹ in relation to copyright works subject to commercialisation.

¹⁹ For more information on moral rights, consents, exceptions and remedies see: <http://www.artslaw.com.au/info-sheets/info-sheet/moral-rights/>

Universities can manage their moral rights responsibilities in relation to the release of OER by:

- ensuring that the university has obtained written moral rights consents from creators;
- ensuring university creators are aware of the licence conditions that will apply to the OER, particularly that their work may be subject to being reused and remixed by others in ways beyond their control;
- allowing university creators to:
 - assert their moral rights by clearly noting their connection to a work; or
 - choose to omit personal attribution if they do not wish to assert their moral right;
 and
- granting university employees the right to release content they have created under open licensing conditions and so making such release a personal and optional decision to be made on their own terms.

Performers' rights and informed consent

Performers have additional rights in their performances and recordings made of their work, including moral rights in performances of musical, dramatic and literary works.²⁰

Performers have the following rights:

- the right to know that a recording is being made and to refuse consent for their performance to be recorded;
- the right to grant or refuse consent for their performance to be broadcast or made accessible on the internet;
- part ownership in the sound recording on which they are a performer; and
- moral rights in the performance.

Performers' rights in OER

Recorded lectures or OER that includes university musical or dramatic performances will need to consider the intellectual rights issues, including copyright and performers rights.²¹ These include:

- **Consult, involve and inform staff early** about the rights issues involved in the recording of lectures and performances, to ensure institution-wide good practice to support OER.
- **Check who owns the content** of the presentation being recorded. The owner could be the institution, or the presenter - a lecturer, a guest speaker or student.
- **Obtain permissions and moral rights consents** to make the recording and for post-recording use. Get the permissions (or a licence) and moral rights consents in writing from the

²⁰ More information about performers' rights is available from Austin, A. C., Coates, J. M., Donnelly, H., & Fitzgerald, B. F. (2009). *Blog, podcast, vodcast and Wiki copyright guide for Australia*. The Law Research Program of the ARC Centre of Excellence for Creative Industries and Innovation (CCI). Retrieved from <http://eprints.qut.edu.au/19714/>. This work is licensed under a [Creative Commons Attribution Non-commercial Share Alike 2.5 Licence](#).

²¹ More in-depth coverage of these issues can be found at the following, from which this section was derived: JISC Legal information. (2010) *Recording Lectures: Legal Considerations*. Retrieved from <http://www.jisclegal.ac.uk/Portals/12/Documents/PDFs/Recording%20Lectures.pdf> and JISC Legal information. (2011) *Recording Lectures and the Law Top Tips*. Retrieved from <http://www.jisclegal.ac.uk/ManageContent/ViewDetail/ID/2276/Recording-Lectures-and-the-Law-Top-Tips-22122011.aspx>. © JISC Legal – www.jisclegal.ac.uk – used under [Creative Commons Attribution 3.0 Unported Licence](#).

performers and the third party copyright owners (such as the composer of a musical work, or the playwright) where needed.

- **Encourage permitted use of open licensed materials**, e.g. video clip with a liberal CC licence, to avoid copyright difficulties.

Universities should obtain the consent of performers in order to record, copy, or make available a performance such as a dramatic performance or lecture as OER. All attendees, including students and audience members should know that a recording is taking place, the purpose of the recording, and to whom it will be made available, with an opt-out provided.

Student copyright

Most Australian universities make no claim of copyright ownership in student works such as assignments and theses. However students may be required to enter into an IP agreement when participating in university projects or third party agreements.

As owners of copyright, students are able to use their work as they wish.

- A student may independently release, as OER, content they have developed unless they have assigned copyright to a publisher or other party; and
- A university wishing to use student work in any way, including as OER, will need to seek permission from the copyright owner.

Student engagement in OER

Students are often already engaged in the Web 2.0 world of blogs, wikis and social networking communities where content is not static. By partnering with students to develop OER, universities can raise student awareness of OER and assist them to become active participants in the educational process. Using, contributing to and creating OER are ways students can demonstrate their ability to interact as global citizens and develop skills that are adaptable and transferrable into the workplace.

Third party content

Resources developed by universities for use by enrolled students are often supplemented with a mix of third party content such as published images, journal and book content, student work and broadcast TV and radio. Digital content from online blogs and forums, twitter feeds, RSS feeds and clips from services such as YouTube may also have been embedded in educational resources.

If university content intended for public release as OER includes anything from another source, it too will need to be OER compatible through its licensing terms. Alternatively permission will need to be sought from the original copyright holder of this material (the third party).

Statutory licences and contractual arrangements

At Australian universities, third party content in course content may be copied and communicated under the terms of the Statutory Licences Part VB and Part VA. The statutory licences allow universities to use certain quantities of third party copyright for their educational purposes. Several conditions, including the requirement that access to the third party content is restricted to enrolled students and employees, means that creators of OER will need to work outside of the statutory licence environment because the release extends beyond a university's student body.

There may also be licensing agreements in place between an institution and third parties in order to make use of materials such as e-books and journal articles from library databases. The terms of these agreements should be checked to see how those works may be used. It is likely that any material licensed for university use will require further permission in order to publish or use it on an openly accessible website or in OER.

Free use exceptions

Free use exceptions available in Australian copyright law, such as fair dealing and the flexible dealing exceptions, allow certain uses of copyright material, usually for individual or specific purposes, without the need to seek permission from the copyright owner. While useful in some situations, the free exceptions impose conditions and copying limits and do not usually permit modifying or remixing work, so should not generally be relied on when creating OER.

Repurposing university generated content as OER

Re-purposing existing university content that contains third party material reliant on the statutory, other licensing arrangements, licences or subscriptions, for re-use outside the provisions of these licences, while retaining the academic integrity of the work, can be frustrating and difficult for OER developers. Layers of copyright ownership in some third party works, such as film or sound recordings can make the job of seeking permissions time consuming and expensive.

A JISC/HE Academy Pilot Program identified that '(m)any (projects) seriously underestimated the amount of time that would be needed to chase provenance of existing resources, clear Copyright and take apart/strip resources where clearance was not possible. Several projects chose not to publish some resources where removal of 'offending' elements negatively affected the pedagogic value.'²²

Rather than repurpose existing educational resources and manage the third party permissions, it may be easier to develop new content which is 'purpose built' for OER. This involves owning, and so controlling, original content, and releasing it under an open licence ready for remixing with third party content that has a compatible licence.

Before releasing OER it will be necessary to check all university content with a view to removing or replacing third party copyright content that is not OER compatible.

OER - overcoming the copyright barrier for third party copyright resources

The abundance of information and resources available in print and digital media or easily accessible on the internet cannot easily be used in OER. In most countries, including Australia, copyright is an automatic right giving the copyright owner the right to copy, adapt, remix and redistribute the material.



²² The Higher Education Academy (n.d.) Intellectual Property Rights Considerations. In *Open Educational Resources infokit*. Retrieved from <https://openeducationalresources.pbworks.com/w/page/24838224/Intellectual%20Property%20Rights%20considerations>. Licensed under a [Creative Commons Attribution Non-commercial Share Alike 2.5 Licence](#).

Unless the copyright owner has assigned an OER supportive licence to their work or grants express permission for the content to be used in a way that is compatible with the licence conditions of the OER being developed, extra checks will be required.²³

It may be necessary to:

- seek permission to include the content in OER;
- consider retaining only what may be considered a ‘small or insignificant portion’ of the content, such as a short quote;
- use alternative resources permitted under OER;
- link to, or cite, relevant online alternatives rather than reproduce them;
- create or commission replacement resources that can in turn be openly and compatibly licensed; or
- use out-of-copyright content.²⁴

As the open access movement gains momentum, more resources suitable for adaptation or use in OER is likely to become available and this will assist overcoming the copyright barrier.

Policy and Policy Development

Hoosen and Butcher²⁵ observe that many of the institutions internationally that have successful OER projects, have not developed or implemented formal OER policies. They also note:

- issues such as sustainability and faculty commitment to the concepts of open content, open access and OER are as important as policy development;
- OER initiatives are often project-driven or donor-funded rather than an integrated institution-wide practice; and
- some institutions first develop guidelines or procedure to support their engagement in OER creation and adaptation. In turn, this institutional experience can evolve into formalised policy.

²³ A more complete explanation of these issues and solutions is covered in: [cc Learn \(2009\) *Otherwise Open: Managing Incompatible Content within Open Educational Resources*. Retrieved from \[http://learn.creativecommons.org/wp-content/uploads/2009/09/Otherwise_Open_report.pdf\]\(http://learn.creativecommons.org/wp-content/uploads/2009/09/Otherwise_Open_report.pdf\)](http://learn.creativecommons.org/wp-content/uploads/2009/09/Otherwise_Open_report.pdf). This report is licensed using a [Creative Commons Attribution 3.0 Unported Licence](https://creativecommons.org/licenses/by/3.0/).

²⁴ The Australian Copyright Council’s *Duration of Copyright* information sheet can assist to determine if copyright has expired. See: <http://www.copyright.org.au/>

²⁵ Hoosen S. and Butcher N. (2012) Experiences of Developing OER-Amenable Policies. In J. Glennie, K. Harley, N. Butcher & T. van Wyk (Eds.), *Perspectives on Open and Distance Learning: Open Educational Resources and Change in Higher Education: Reflections from Practice* (pp. 217-235) Vancouver, Canada: Commonwealth of Learning. Retrieved from <http://www.col.org/resources/publications/Pages/detail.aspx?PID=412> Licensed under a [Creative Commons Attribution Licence](https://creativecommons.org/licenses/by/3.0/).

Developing policy for OER in higher education

Universities can use their IP policy review processes as an opportunity to engage their employees in discussion about open licensing options and adopting OER for university teaching. This will, in turn, raise awareness and inform university policy and guidelines. The consultation should consider the university's motivation and strategic direction, establish employee expectations and identify required actions.

A start can be made by:²⁶

- concentrating on the benefits that open content licensing of university-generated content may bring to the university;
- reviewing policies, contracts and grant conditions currently in place at the institution to decide what changes may be required;
- ensuring policies clearly state who owns employee generated content developed by administrators, academic staff members, students and others associated with the university;
- identifying and addressing policy barriers that may need to be addressed;
- developing and adapting policies that facilitate and achieve goals related to creating OER; and
- updating human resources guidelines and employment contracts to support employee engagement in OER. For example, by including OER development as a credit towards performance review and academic promotion, there is more incentive to develop them.

New, OER-supportive policy

As part of the Open Access to Knowledge (OAK Law) project, Fitzgerald et al.²⁷ developed an action agenda regarding a legal framework for copyright management of open access within the Australian academic and research sector. This resource is also useful for the development of policy supportive of OER. The authors recommend that each institution should develop policy on open access, which clearly states its objectives and interests in providing open access to university content.

Starting afresh, rather than reviewing or updating existing policy, places a university in the ideal position of being able to formalise a policy position which specifically addresses the open agenda of OER.

²⁶ This section is drawn from Appendix 1 of the following publication, which provides a more expansive overview of the skills and competences necessary for the effective use of OER in higher education. Commonwealth of Learning (2011) *Guidelines for Open Educational Resources (OER) in Higher Education*, Vancouver, Canada: Commonwealth of Learning, and Paris, France: UNESCO. Retrieved from <http://unesdoc.unesco.org/images/0021/002136/213605e.pdf>. Licensed under a [Creative Commons Attribution Licence](#).

²⁷ Fitzgerald, B., Fitzgerald, A., Perry, M., Kiel-Chisholm, S., Driscoll, E., Thampapillai D. & Coates J. (2006). *Creating a Legal Framework for Copyright Management of Open Access within the Australian Academic and Research Sector*, OAK Law Report Number 1. Retrieved from www.oaklaw.qut.edu.au This work is licensed under a [Creative Commons Attribution Non-commercial Share Alike 2.5 Licence](#).

In New Zealand, Otago Polytechnic²⁸ has done this.

'Following a two-year consultation and revision process, Otago Polytechnic proposed a unique and appropriate solution for a digital age. The new policy provides dual ownership of intellectual property by the institution and its creators, on condition that it is licensed under a Creative Commons Attribution license. In this way, the institutional investment in teaching materials and research output is protected, but with the freedoms for staff and students to reuse, adapt and modify their creative works for any purpose, including commercial activity. The policy enables Otago Polytechnic staff to publish and disseminate research findings freely, without compromising their intellectual property rights. The policy has resulted in a win-win solution for all stakeholders.'

Making a start

While some existing Australian university IP policies may already serve OER engagement, this position is not always made clear to university managers, or to employees as creators of university content. Uncertainty can complicate or hamper OER innovation, particularly when there are non-exclusive arrangements in place, or when the language of the policy document is unclear or legalistic.

A simple statement added to existing university policy can demonstrate the extent to which the university is committed to OER, or is willing to support individual employees who are motivated to engage in OER creation. For example:

Unless another agreement is in place which prevents this, the university encourages employees to make content they have created in the course of their university employment available under Creative Commons licences to promote the sharing of knowledge and the creation of Open Educational Resources (OER).

OR

University employees wishing to release under Creative Commons licences or as Open Educational Resources (OER) content they have created in the course of their employment, should first seek clearance from the university.

OR

Copyright and other IP generated by university employees in the course of their employment may be released under Creative Commons licences at the university's or creator's discretion in accordance with the university's commitment to engaging in activities that assist in the dissemination of knowledge and have a positive impact in the wider community.

²⁸ Mackintosh W. (2012) Opening Education in New Zealand: A Snapshot of a Rapidly Evolving OER Ecosystem. In J. Glennie, K. Harley, N. Butcher & T. van Wyk (Eds.), *Perspectives on Open and Distance Learning: Open Educational Resources and Change in Higher Education: Reflections from Practice* (pp. 263-281) Vancouver, Canada: Commonwealth of Learning. Retrieved from <http://www.col.org/resources/publications/Pages/detail.aspx?PID=412>. Licensed under a [Creative Commons Attribution Licence](#).

Managing risk

The cultural change and challenges associated with developing OER will inevitably carry some risk. Starting small, and building up project expertise and experience will allow university OER designers to grasp the issues involved and develop resources and guidelines to support their work.

Here are some suggestions for the issues that will need consideration when developing university OER. Importantly OER projects should:

- provide access to training and resources necessary to ensure an understanding of the intellectual property rights, copyright and licensing considerations;
- provide clarity concerning ownership and intellectual property rights issues in both original content and any incorporated third party content; and
- develop a system to check quality of content, ensure compliance with agreements and licences and manage the release and takedown of OER.

A risk management calculator²⁹ created as part of the Web2Rights OER Support Project can be used by OER developers to understand and assess the various risks associated with developing OER, particularly when incorporating third party content.

Guidelines for OER policy development

The issues and questions described below were drawn from a longer report³⁰ and are part of the Feasibility Protocol, a key outcome of an Office for Learning and Teaching (OLT) funded project titled: “Adoption, use and management of Open Educational Resources to enhance teaching and learning in Australia”. The Feasibility Protocol is a set of guiding principles that prompts questions and raises issues that should be considered by universities and tertiary institutions wishing to take advantage of OER and Open Educational Practices (OEP). More specifically the protocol aims to assist senior executives, managers and policy makers to make informed decisions about the adoption of OER and OEP at several levels within their institution. The Feasibility Protocol prompts questions on four aspects. These aspects are:

- The **Opportunities** involved with the adoption of OER and OEP;
- Factors related to the **Challenges** associated with the adoption of OER and OEP;
- **Strategic Directions** that need to be considered for an effective adoption of OER and OEP;
- Intellectual property (IP) **Policy Recommendations** of higher education institutions in Australia.

For the purpose of this document, only the Policy Recommendations will be described. These recommendations are focused on organisational, project and individual levels.

At an organisational level:

Universities wanting to involve employees in developing OER or releasing existing university content under open content licencing.

²⁹ See: <http://www.web2rights.com/OERIPRSupport/risk-management-calculator/>

³⁰ The full project report can be accessed at http://wikiresearcher.org/OER_in_Australia/Documentation

University considerations:

- Is the university's encouragement of OER reflected in current university policy?
- Do current employment contracts support the development of content for OER?
- Are there non-exclusive or other arrangements with university employees that will need consideration?
- Are checks required to ensure that university content intended for OER release is not already subject to a university commercialisation or other agreement?
- What authorisations, agreements or waivers may need to be secured before the university embarks on a project intended to develop OER?
- Are there university guidelines about the type of licence under which university developed OER should be released? What are the considerations?
- What university guidelines and processes are necessary to ensure issues of quality and copyright compliance are addressed?
- How does the university intend to brand the resources?
- Does the university intend to host OER or will the resources be included in a public repository of OER?

Risk management

- How will the university manage any dispute which may arise about the ownership of the resources?
- How will the university respond if it identifies that the resources are being used inappropriately?
- Who carries liability for copyright infringement in university-generated OER, the individual or the university?
- What training or resources are necessary to ensure employees developing OER are aware of the IP and copyright considerations?

At a project level

University faculty or project teams engaging in the development of OER

University considerations:

- What authorisation will the project need from the university before embarking on a project to develop OER?
- Does the project have the right to release existing university-generated content as OER or is clearance at a higher university level required?
- How will we know if university content we want to include in our OER project is subject to a university commercialisation agreement?
- Is there a university sign-off process to ensure that by developing and releasing OER we are not giving away university IP without authorisation?
- Does the university require to be acknowledged on the OER?
- Are there university guidelines about the type(s) of licence our OER project should use?

Creators' rights

- What agreements or clearances may be required from individuals participating in or developing project OER?
- Are the individuals involved in developing content for the project aware of the open content licence under which the OER will be released?

Using third party content

- How can we be confident that third party copyright content included in project OER is licence compatible or has the necessary clearances?
- Do we need to develop a risk approach to using third party copyright content in OER developed by the project?
- What processes should the project put into place in order to keep track of clearances, permissions and licencing conditions that apply to the use of third party content in project OER?

Training and resources

What training is necessary to ensure that those involved in developing university OER are aware of their responsibilities relating to:

- university copyright and IPR
- moral rights
- use of third party content.

What resources are available to the project so we can learn about:

- OER
- creative commons and open content licensing
- copyright and IPR responsibilities.

At individual levels

University employees wanting to develop OER

Consideration for the university as employer

- Do I have the right to release as an OER, educational resources which I have developed in the course of my employment?
- Can I release as OER, university-generated resources for which I am not sole creator?
- Do I need to acknowledge my connection with the university in some way on the OER?
- Can I develop OER independently of the university and be confident it does not conflict with my employment contract?

Personal considerations

- What type of open content licence will I apply to my work?
- Can I be sure that releasing my own work as OER does not conflict with any other agreement I have entered into, such as a publisher agreement?

Using third party content

- Will I be using third party content in my OER?
- How can I be confident that any third party copyright content used does not create licensing conflicts by mixing content with different licensing conditions?

Managing risk

- What resources are available to me to ensure that I understand the copyright, licensing and IPR considerations in OER?

Finding out more

Support and resources for the development of OER can be found through organisations such as:

- The Commonwealth of Learning - <http://www.col.org/resources/crsMaterials/Pages/OCW-OER.aspx>
- William & Flora Hewlett Foundation - <http://www.hewlett.org/programs/education-program/open-educational-resources>
- OER Commons Wiki - http://wiki.oercommons.org/mediawiki/index.php/Main_Page
- JISC Legal - <http://www.jisclegal.ac.uk/>
- OER Africa - <http://www.oerafrica.org/>

Information about the copyright and open access environment specifically relating to Australia can be found at:

- OakLaw - <http://www.oaklaw.qut.edu.au/reports.html>
- Australian Copyright Council - <http://www.oaklaw.qut.edu.au/reports.html>

Resources which provide information about open content licensing include:

- Creative Commons - <http://creativecommons.org/>
- Creative Commons Australia - <http://creativecommons.org.au/>
- Open Definition - <http://opendefinition.org/guide/>
- Wikimedia Commons - http://commons.wikimedia.org/wiki/Commons:Choosing_a_license

Conclusion

By incorporating a licence into content which they own and releasing it as OER, universities can take open practices, including open access to online resources, to a new and more practical level.

When generating OER, certainty for all university stakeholders is important from the outset. The existing copyright regime and a lack of clear understanding of the rights issues involved, is often noted as a barrier to the development of OER.

OER supportive guidelines, resources and policy can equip universities and those they employ, to develop OER and to embrace the opportunities offered through engagement with OER. Universities should be explicit in stating their goals in relation to OER, and ensure there are adequate resources allocated to support their use in university programs. This includes the time and cost involved in developing policy and processes which support university and individual engagement in OER, seeking consents, and obtaining clearance for third party resources that are not already licensed in a way that supports OER involvement.

As universities engage in new ways of producing and using university content, and creators of university content seek new ways to participate online with colleagues and students, they will benefit from using and creating OER.

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Appendix

Institutional Policy and Guidelines that relate to OER

LAST UPDATED OCTOBER 2012

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Australian Catholic University June 2008	University asserts ownership in IP if it is undertaken under the terms of employment or is commissioned.	University will not assert ownership in IP in books / articles prepared for individual use or conference presentations or other such scholarly work or subject matter generated by staff unless it was specifically commissioned by the university.	University lays no claim for undergraduate students. Postgraduates may be asked, prior to starting study, to grant a non-exclusive licence to the university.	http://www.acu.edu.au/policy/research/general_policies/intellectual_property_policy
Australian National University July 2010 Review date 2013	University assigns copyright in course materials to the author. University retains licence to use them for teaching and research, while author is employed and this may be extended past employment by agreement. University grants the employee a non-exclusive right to sub-licence non-commercial copyright matter which they have created, under an open content licence such as Creative Commons.	University owns copyright in anything created by an employee but assigns copyright back to the employee. University retains the right to publish for open access purposes. University encourages scholarly works to be made publically available free or at a low cost to the public in accordance with Open Access principles. Employee must provide copies to the university.	Student owns copyright but university may acquire it in certain circumstances.	http://policies.anu.edu.au/policies/intellectual_property/policy

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Bond University				Intranet access only
Central Queensland University July 2001 Amended Sept 2010 Review date 2013	University retains copyright in course materials. The originator is granted free and non-exclusive use of the course materials during and after employment unless it has commercial value or was commissioned.	University owns IP developed by its staff but will assign ownership of IP in publicly published research, books, journal articles, conference papers and proceedings, textbooks, computer programs, software etc. to the originators unless the work was commissioned or has commercial potential. University has mandated submission for all scholarly works via the Institutional Repository policy.	University does not claim ownership of IP which undergraduate or postgraduate students generate through their studies or associated activities with the university unless by written agreement.	http://policy.cqu.edu.au/Policy/policy_file.do?policyid=1746 and http://policy.cqu.edu.au/Policy/policy_file.do?policyid=1747
Charles Darwin University May 2005 Amended Jan 2012 Review date 2008	University grants to the author of any course materials a non-transferable, perpetual, royalty-free licence to use the teaching material created for the sole purpose of teaching any course.	University is the owner of IP created by staff in pursuance of the terms of their employment with the university unless otherwise negotiated.	Students own the IP that they generate unless otherwise negotiated or required explicitly as a condition of working on a particular project.	http://www.cdu.edu.au/governance/policies/intellectualpropertypolicy.pdf
Charles Sturt University	University owns all IP which is created under contract of employment with the university including works prepared for	Originators own IP created by them in works such as books, articles, artistic and creative works unless they were prepared for course	In the absence of a specific contract to the contrary, students own	http://www.csu.edu.au/research/policy/

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Dec 1997 Amended Aug 2007 Review date 2008	university course work and teaching.	work or teaching or were created using university IP or resources.	IP which they invent. There are some exceptions to student ownership where CSU collaboration or pre-existing IP is used.	
Curtin University of Technology March 2011	University owns copyright in course materials. Course materials may only be published on a university controlled website or any other website with the prior written permission of the relevant Head of School or equivalent line manager. University claims ownership of commissioned works and university projects.	University owns all IP created by a staff member in their course of duties except for IP in artistic, indigenous, scholarly works and by agreement. The staff member grants the university a non-exclusive, royalty-free and irrevocable licence to publish and use the copyright work for its educational and research purposes.	Students own their IP unless it arises from a university project or incorporates university IP. Students will own the copyright in their Thesis, unless the student and the university otherwise agree in writing.	http://policies.curtin.edu.au/policies/viewpolicy.cfm?id=2b253734-f62e-11dc-b2bf-45785751f674
Deakin University New IP Policy for release 2012	University owns the copyright in any teaching materials / computer / designs etc. created by staff.	University transfers IP in scholarly works to the originator.	Students own all IP in works that they create.	Intranet access only
Edith Cowan University Oct 2011 Review date 2014	University owns all IP created by a staff member in the course of the staff member's employment with the university. The staff member who created the teaching materials has a non-exclusive licence to use	University is willing to forgo copyright ownership in a creator's scholarly work (except where the scholarly work has been specifically commissioned by the university) on the condition that the creator	Students own the IP they create during their studies including their thesis. A separate agreement is required to vary this if necessary.	http://www.ecu.edu.au/GPPS/policies_db/policies_view.php?rec_id=0000000377

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
	the teaching materials for teaching and research purposes, both during and after the term of the staff member's employment with the university.	provides a perpetual, irrevocable, worldwide, royalty-free, non-exclusive licence in favour of the university to allow the university to use that work for teaching and research purposes and to reproduce and communicate that work in any format for teaching and research purposes.		
Flinders University Dec 1998 Amended Jul 2011	University owns copyright in teaching materials which are produced by its staff in the course of their employment and will normally be willing to allow staff to use, in the course of subsequent employment by another university, teaching materials which they prepared while employed at the university. Similarly the university will normally allow staff and former staff to use teaching materials for publication and other academic purposes, unless it has strategic or commercial significance. Staff wishing to use an item of teaching material for a purpose other than a Flinders University purpose is required to apply for permission.	University retains ownership of IP created by staff in the course of their employment. However, university agrees that originator owns copyright in scholarly works provided that certain nonexclusive rights are retained by the university.	University makes no claim to ownership of IP developed by a student except if assignment is required in certain situations.	http://www.flinders.edu.au/ppmanual/policySecretariat/ip.htm

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Griffith University May 2011 Review date 2013	University owns copyright, but grants each Staff member certain non-exclusive rights to use scholarly works, educational materials or creative works that are university owned IP created by the staff member, including for publication.	University grants each staff member a non-exclusive, royalty-free, perpetual, irrevocable, worldwide, transferable right to use, adapt or modify scholarly works , educational materials or creative works that are university owned IP created by the staff member, for the purposes of publication, teaching, academic research and personal promotion by the staff member.	Unless otherwise agreed, students own and can deal with any IP which they create in the course of their enrolment at the university.	http://www62.gu.edu.au/policy/library.nsf/binders/0a1e4df4c2be64584a256bc100631d7d?op=endocument
James Cook University Jul 2011 Review date 2015	University does not assert ownership of copyright in teaching materials but requires staff to grant to the university certain rights to use and reuse them including commercially.	University does not assert ownership of copyright in scholarly or creative output, unless the work was commissioned by the university.	University makes no claim to automatic ownership of IP created by students in the course of their studies at the university.	http://www.jcu.edu.au/policy/allitoz/JCUDEV_009787.html
La Trobe University July 2009 Review date 2011	University encourages the authors of teaching materials to consider making such materials publicly and freely available, e.g., via the internet, or publishing commercially providing that those materials are not subject to a prior third party agreement, such as a contract for the design or delivery	University owns IP generated by staff in the course of employment except for specified works - including literary, dramatic, musical or artistic works - which the authors own.	University does not own IP created by students except by express assignment.	http://www.latrobe.edu.au/policy/documents/intellectual-property-policy.pdf

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
	of a course or training program.			
Macquarie University October 2006	Teaching materials, in any form, that have been developed as part of the course of employment of any university employee will be owned by the university as the employer.	University will not assert ownership of copyright in scholarly work created by university employees, except where the work was commissioned or where there are other contractual arrangements in place.	Generally, students retain ownership of IP created by them in the course of their study at the university including their theses. Assignment of IP may be required when students are participating in university projects.	http://www.research.mq.edu.au/about/research@macquarie/policies_procedures_and_conduct/documents/IPP_Ver_3.1_approved_20_10_06.pdf
Monash University Amended Jan 2012	University owns all IP which is created by an originator in pursuance of the originator's employment. University assigns ownership in the copyright work to the originator, subject to a certain rights that the university retains for teaching and research purposes.	Where an originator of a copyright work is a member of the academic staff of the university, the university assigns ownership in the copyright work to the originator subject to retaining rights to use the work for the university's teaching and research purposes.	University does not claim IP created by a student unless it is prescribed.	http://www.adm.monash.edu.au/legal/legislation/chapter-eleven.html
Murdoch University Dec 2007	University owns all IP created by its employees in the course and scope of employment including all course and teaching materials.	University will not own copyright in an employee's conventional scholarly output, except where it has commissioned the publication. University is granted a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right of sub licence)	Subject to specified provisions, students own their respective Student IP, but grant Murdoch rights to use this IP for Murdoch's teaching and research purposes.	https://policy.murdoch.edu.au/dotNet/documents/?docid=1089&LinkedFromInsertedLink=true&public=true

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
		to use copyright material in an employee's conventional scholarly output for its teaching and research purposes, where that conventional scholarly output was produced in the course or as part of that employee's duties of employment.		
Notre Dame Jan 2003 Reviewed Sept 2006	University owns all IP and the rights attaching to that IP created by an employee in the course of their employment or participation in a university project.	University waives the right to copyright ownership in favour of an employee who has created the scholarly, literary, artistic or other specified work but retains some ongoing rights to use the copyright work for educational and research purposes (until it is published).	Students generally own IP created during the course of their studies at the university and will, for research purposes only, make available to the university library a copy of the full text of their thesis.	http://policy.nd.edu/policy_files/IntellectualPropertyPolicy.pdf
Queensland University of Technology June 2011 Review date 2014	University is the owner of copyright where the work is created by the staff members in the course of their employment. University grants to creators a perpetual, worldwide, non-exclusive, royalty-free licence to use the teaching materials to fulfil their teaching, research and training responsibilities at the university.	University assigns to the creator the right to publish their scholarly work, subject to a perpetual, irrevocable, worldwide, royalty-free, non-exclusive licence in favour of the university to use that work for university purposes and to reproduce and communicate that work online for non-commercial purposes via the university's open access digital repository.	Students own the IP they generate unless participation in a university project varies this.	http://www.mopp.gut.edu.au/D/D_03_01.jsp

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
RMIT Aug 2004	University owns all education and training IP created or developed by staff in the course of their duties. The university claims ownership of all IP in course material, course material delivery systems and other work-related outputs, as well as some non-exclusive rights to use personal notes, overhead and other materials which a staff member produces to assist with student learning. Collaborative work with more than one originator is owned by the university.	University assigns ownership of IP in scholarly works to staff but retains non-exclusive rights to use, reproduce and communicate it publically.	Any IP created solely by a student is owned by that student. Participation in university projects or commissions may require a student to enter into an IP agreement.	http://www.rmit.edu.au/browses;ID=65zyqgra83ql
Southern Cross University May 2009 Review date 2014	University asserts ownership of all IP rights created or developed by staff.	University retains discretion to disclaim its ownership in respect of any work created or developed by staff such as journal articles and conference papers (but not any work that is commissioned or course material) subject to the university retaining some rights.	In most cases, students own any IP rights they create or develop while undertaking study.	http://www.scu.edu.au/pqr/index.php/19/
Swinburne University	Except where an agreement to the contrary has been negotiated, the university owns IP created staff members in the course of	University expressly disclaims any ownership of copyright works created by originators as part of their research or scholarship, for	Students own their IP except where generation of the property has involved use of the university's resources	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/70

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Aug 2008	employment. In particular, the university owns copyright in any commissioned material, course materials and general materials.	the sole purpose of publication (including in electronic form) of same in the form of books, articles and conference papers. This disclaimer also extends to creative works and audio-visual productions made for the sole purpose of exhibition.	and/or services beyond that which is ordinarily provided to Students enrolled for the particular course or program.	
University of Adelaide July 2012 Review date 2015	University asserts its ownership of copyright in teaching materials produced by staff in the course of their employment. Staff members may use teaching materials which they created while employed at the university in subsequent employment with another employer. Staff members and former staff members wanting to use teaching materials for publication and other academic purposes must apply for permission.	University is willing to forego its claim to ownership of IP and assigns to the originator the copyright in any scholarly work (except if commissioned) created in the course of the originator's employment with the university. Several conditions apply, including that the originator of the work should try to obtain permission from the publisher to allow the university to use the scholarly work for its teaching and research activities.	Students own the IP in their own work unless they have signed an agreement varying this. The university is granted rights to use IP generated by students in the course of their studies, for teaching and research purposes.	http://www.adelaide.edu.au/policies/1263/
University of Ballarat Dec 1995	University owns IP created in pursuance of a staff member's employment, scholarship or research but grants creators a non-exclusive licence to use and reuse	Scholarly works are not singled out in the policy, so the guidance for course and teaching materials applies here.	Students own the IP created by them. Post-graduate students will own copyright in their thesis, but the university owns other rights in their IP.	http://www.ballarat.edu.au/data/assets/pdf_file/0017/45008/s82_intell_prop.pdf#search="intellectual property"

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Amended May 2007	the IP for teaching and research at the university unless it has the potential for commercial exploitation. Staff need written notification from university that the IP does not have commercial potential.			
University of Canberra Nov 1995 Updated June 2010	University claims ownership of all IP created by a staff member. For course materials the university grants the originator a non-exclusive licence to use them for teaching, research and professional purposes.	University agrees that originators retain copyright in any materials (other than course materials) created under contract of employment with the university unless an agreement is negotiated.	Students own the IP created by them. The university may assert an interest in the IP where collaboration or university IP is involved.	https://guard.canberra.edu.au/policy/policy.php?pol_id=2962
University of Melbourne Dec 2006 Amended Nov 2010	University asserts ownership of IP created by academic staff in the course of their employment, except for scholarly works.	Rights to scholarly works are owned by the member or members of academic staff who created such works. Authors are deemed to have granted to the university a non-exclusive licence to use the works for educational, teaching and research purposes only.	University has no rights to IP solely developed by students unless by agreement.	http://www.research.unimelb.edu.au/ip/ip/overview
University of New England	University owns all knowledge assets created by staff. Materials prepared for teaching in the course	Books and other scholarly works which staff wish to publish must be disclosed and approved for	University does not assert ownership over IP created by students except where	http://www.une.edu.au/policies/pdf/knowledgeassetsintellectualproperty.pdf

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
May 2007 Review date 2008	of employment, e.g. course notes, cd roms, and websites, are owned by the university.	publication as designated in the appropriate discipline area.	required for on-going research teaching or knowledge asset transfer. Students retain ownership of the copyright in their thesis.	
University of New South Wales July 2010 Review date 2013	University does not assert its right to ownership of any IP in course materials generated by staff, except if specifically commissioned or produced using university resources. Creator grants to university perpetual non-exclusive rights to use the works or subject matter generated by that creator for the university's teaching and research purposes.	University does not assert its right to ownership of any IP in scholarly books, articles, or other scholarly works or subject matter generated by staff, except if specifically commissioned or produced using university resources. Creator grants to university perpetual non-exclusive rights to use the works or subject matter generated by that creator for the university's teaching and research purposes.	University does not assert ownership of IP created by students, including their thesis. Specific agreements and collaborative arrangements can vary this.	http://www.gs.unsw.edu.au/policy/ippolicy.html
University of Newcastle Aug 2007 Amended Feb 2012	University owns the copyright in course materials created by staff members. Course materials may be published by a staff member without the need to obtain authorisation where they are on Blackboard or are solely for use in the teaching of a university course or program or a university-approved course or program,	University owns all IP created by staff members except for artistic works, indigenous works and scholarly works and by agreement with the university.	Students will generally own IP created in the course of their studies unless an agreement or participation in a university project varies this. A student owns their own thesis, while the university reserves the right to lodge a copy in a university library or university digital thesis database.	http://www.newcastle.edu.au/policy/000831.html

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
	either directly by a staff member or by another institution under a written contract with the university.			
University of Queensland June 2011 Review date 2014	University owns all IP created by staff in or during the course of employment with the university but grants to the creator of teaching materials a perpetual, non-exclusive licence to use their teaching materials for teaching, educational and research purposes at other educational institutions. The creator may not use the teaching materials to directly compete with the university and may not sublicense the teaching materials to others to generate royalties or licence fees.	University does not assert ownership of IP in any scholarly works generated by staff, except if specially commissioned. Creators of any scholarly work grant to the university a perpetual non-exclusive licence to use the works for the university's teaching, educational and research purposes. The creator can inform the university if they enter into third party obligations that conflict with this grant of licence.	University does not assert ownership of IP created by students, particularly in relation to the student's thesis or scholarly works, unless by separate agreement.	https://ppl.app.uq.edu.au/content/4.10.13-intellectual-property-staff-students-and-visitors#Policy
University of South Australia Intranet access	IP generated by university staff in the course of or incidental to their employment is automatically owned by the university.	IP generated by university staff in the course of or incidental to their employment is automatically owned by the university.	Students will generally own the IP they develop during the course of their studies. This is subject to any other arrangements a student may enter into, such as participation in a University-Student project or through	http://w3.unisa.edu.au/res/contracts/intprop.asp Full policy is intranet access only

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
			employment.	
University of Southern Queensland Aug 2011 Review date 2012	University, as an employer owns all IP invented, created, made or designed by an employee in the course of employment, including course materials. Where the originator wishes to use that IP for purposes outside the course of employment, the university reserves the right to grant a non-exclusive licence on conditions, or to not grant a licence, if it considers the university interests, including commercialisation of the IP would be adversely affected by such a grant.	Ownership of copyright in scholarly material or artistic works produced by an employee shall remain with that employee unless a contractual obligation varies this.	University makes no claim to automatic ownership of IP created independently by students. Involvement in a university project may involve assignment of IP to the university, but this will not affect ownership of copyright in a student's thesis.	http://policy.usq.edu.au/portal/custom/detail/intellectual-property/
University of Sydney Mar 2002 Amended 2009	University asserts ownership of all IP created by a staff member in pursuance of the terms of his or her employment with the university, including teaching material and computer programs, but grants the author rights to use the teaching material for the sole purpose of teaching any course.	University does not assert copyright ownership over any work created by staff that is a work of a scholarly nature, including, without limitation, a journal article, conference paper, creative works or proceeding or text, but retains rights to use and develop it.	University does not assert any claim in respect of IP created by a student, unless the student agrees otherwise.	http://sydney.edu.au/policies/howdoc.aspx?recnum=PDOC2011/108&RendNum=0
University of Tasmania	University asserts ownership of IP	University does not assert	University will not assert	http://www.utas.edu.au/ dat

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
May 2001	created by university staff in the course of their employment excluding copyright in scholarly works.	ownership of copyright in the scholarly works of university staff.	ownership of IP rights developed by students; however participation in a university project may vary this. Students retain copyright in their theses.	a/assets/pdf_file/0009/220689/Intellectual-Property-Policy-PDF-220KB.pdf
University of Technology, Sydney June 2009 Review date 2014	University does not assert ownership of course and educational materials or creative or scholarly works unless they were commissioned, but reserves a nonexclusive, ongoing licence to use them.	University does not assert ownership of course and educational materials or creative or scholarly works unless they were commissioned, but reserves a nonexclusive, ongoing licence to use them.	Students own the copyright in their theses. University will not generally claim ownership of IP created by students.	http://www.gsu.uts.edu.au/policies/intellectual-property-policy.html
University of the Sunshine Coast Nov 1997 Amended Sept 2011	University owns copyright in course materials created by staff members during their employment at the university. Staff members who created the course materials, are granted rights to use them for teaching and research purposes, both during and after employment.	University grants ownership of copyright in scholarly works or creative works to the staff member unless they were created pursuant to a legally binding agreement. Grant of ownership of copyright to the staff member is subject to the university reserving rights to use the scholarly works or creative works for teaching and research purposes.	Enrolled students of the university own the IP created by them in pursuit of their studies.	http://www.usc.edu.au/University/AbouttheUniversity/Governance/Policies/IP.htm

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
University of Western Australia Oct 1997 Review date 2007	An originator owns copyright in all copyright works created by the originator unless another agreement prevails. The university is granted non-exclusive rights to use the work for the university's teaching and research purposes.	Apart from computer-programs, staff own copyright in all copyright works created by them. Where an originator owns copyright, the university is granted non-exclusive rights to use the work for the university's teaching and research purposes.	Subject to the terms of other agreements, students own IP which they create, and always own the copyright in their thesis.	http://www.universitypolicies.uwa.edu.au/search?method=document&id=UP07/49
University of Western Sydney April 2012 Review date 2013	University owns copyright in course materials created, developed and presented by employees of the university in the course of their employment. At the end of their employment an employee may request a non-exclusive personal licence to use conventional course materials for teaching and scholarly purposes but not for commercialisation or transfer of any rights to a third party.	University grants ownership of copyright in scholarly works or creative works created by an employee in the course of employment to the employee, unless the work was commissioned or is bound by an agreement. University reserves a non-exclusive licence to use it for teaching and research purposes.	Students generally own the Intellectual Property that they create subject to any written agreement to the contrary entered into by the student. Students retain copyright in their thesis.	http://policies.uws.edu.au/view.current.php?id=00085
University of Wollongong June 2006 Amended Jan 2012	In the absence of an agreement to the contrary, copyright in teaching material is granted to the creator subject to a non-exclusive licence to the university. Staff members may freely grant licences to others subject to the non-exclusive licence	Except by agreement, staff members retain ownership of creative material and the copyright in scholarly material they create in their course of employment.	Except by agreement, students retain ownership of creative material and the copyright in scholarly material they create in their course of enrolment.	http://www.uow.edu.au/about/policy/UOW058689.html

University Name Date of policy Date amended Proposed review date	Staff IP - course materials - course of employment	Staff IP - scholarly output	Student IP	URL of Policy
Review date 2010	to UOW and that each staff member may also, if the staff member so chooses, assign copyright. Any such assignment will operate subject to the non-exclusive licence to UOW.			
Victoria University Nov 2010	University owns the IP in all teaching and learning materials created or developed at or for the university, unless otherwise agreed by the university in a specific instance. University grants the author of these materials a fee-free irrevocable non-exclusive licence to use that IP for teaching or research at another university or educational institution, but not for any commercial use by the author outside another university or educational institution.	Ownership of IP consisting of copyright in books, articles or other written scholarly literary works shall vest in their authors, unless otherwise agreed in a specific instance.	Students will own the IP they create in the course of their studies at the university, including copyright in their thesis, unless subject to the terms of other agreements or otherwise agreed in a specific instance.	http://wcf.vu.edu.au/GovernancePolicy/PDF/POR040809000.PDF