

INTELLECTUAL PROERTY POLICY (AS IN 2011UASR)

Preamble

1.1 The principal objective of the Fiji National University (FNU) is to create, disseminate and preserve knowledge that is necessary for the continuous socio-economic and political advancement of Fiji, its neighbours in the Pacific, the world, and for common good. To this end, FNU would devote its teaching, research, and community outreach effort and to this end the FNU shall engage scholars as well as practitioners in various capacities. The scholars and practitioners have the freedom, without any interference from any person, to engage in research and all that is necessary to create, disseminate and preserve knowledge. They have the freedom to study, create and develop ideas and products, and to engage in discussions on the subject matter of their studies, and share their results with colleagues, students and the wider community.

1.2 In such intellectual pursuits, original works would often be created. The Intellectual Property Policy of FNU shall determine all aspects of rights over and responsibility for, such creations and achievements. The policy is to be interpreted within the context of the overall goals of the Institution: to create, disseminate and preserve knowledge that is necessary for the continuous socio-economic and political advancement of Fiji, its neighbours in the Pacific, and the world. It is recognised by the FNU community that in the process that leads to the creation of intellectual properties, facilities, finances, and institutional support of FNU may often be involved. As such, the FNU community recognizes that a fair share of the benefits from the creation of intellectual property should accrue to the institution.

1.3 This policy is also to be interpreted within the provisions of the *Copyright Act 1999*, *Patents Act* and *Trades Marks Act* and any other intellectual property rights legislation in Fiji, which shall continue to guide those who reproduce, alter, or perform works that are protected by copyright, patent and trade mark.

1.4 The FNU has established this Intellectual Property Policy for the management of intellectual property in order to:

1.4.1 Promote, preserve, encourage and aid scientific investigation and research.

1.4.2 Provide an organisational structure and procedures through which inventions and discoveries made in the course of FNU research may be made readily available to the public through channels of commerce.

1.4.3 Establish standards for determining the rights and obligations of the FNU, creators of intellectual property (creators, inventors, discoverers, developers, and authors) and their sponsors with respect to inventions, discoveries and works created at the FNU.

1.4.4 Provide for the FNU's overall objective of creating, disseminating and preserving knowledge for advancement of Fiji and for common good.

1.4.5 Enhance the reputation of FNU as an academic institution and a member of society by pursuing the highest ideals of scholarship by conferring the benefits of that scholarship and teaching on the FNU community and the wider society.

1.5 This policy is intended to protect the interests of FNU and its employees. Nothing in this Policy shall be construed as constraining free inquiry at FNU. If there is at any time any perceived conflict between the policy and the objective of free inquiry, the objective of free enquiry shall prevail over this policy.

1.6 Nothing in this Policy is intended to limit or restrict the right of FNU employees, and/or its students, and/or its visitors from publishing the results of their research and intellectual pursuits. This policy would achieve its objective only upon full disclosure to the FNU's Officer Responsible for Research, by its employees, students and visitors of works done while at the FNU.

2.0 Definitions

2.1 The FNU policy adopts the definitions of terms related to intellectual property as are contained in section 2 of the *Copyright Act 1999*, section 2 of the *Patents Act* and section 2 of the *Trades Marks Act*.

2.2 For clarity, the terms 'author', 'creator', 'inventor', 'developer', 'discoverer' have the same contextual meaning. By this is meant:

2.2.1 In the case of a literary, dramatic, musical or artistic work that is computer generated, the person by whom the arrangements necessary for the creation of the work are undertaken.

2.2.2 In the case of a sound recording or audio visual work, the person by whom the arrangements necessary for the making of the recording or audio visual work is undertaken.

2.2.3 In the case of a broadcast, the person making the broadcast or, in the case of a broadcast that relays another broadcast by reception and immediate retransmission, the person making that other broadcast.

2.2.4 In the case of a cable programme, the person providing the cable programme service in which the programme is included.

2.2.5 In the case of an invention, the person who did the inventing.

2.2.6 In the case of a developer, the person who did the development.

2.2.7 In the case of a discoverer, the person who did the discovery.

2.2.8 The author, creator or inventor of a work of any of the descriptions referred to above (s2.2.1-2.2.7) may be a natural person or a body corporate.

3.0 Author, Creator, Inventor

3.1 Subject to S4 of this policy, the rights over any material authored, created or invented are determined with reference to the resources utilised for the same.

3.2 Subject to S4 of this policy, full-time academic staff are allowed to devote any or all their time over 34 hours per week for each period of 52-weeks except for the period taken for their annual leave, in scholarly, scientific or exploratory pursuits that are not related to their scheduled teaching. Work carried out during such periods may include consultancies.

3.3 Except for ex-gratia community work only undertaken during their approved annual leave, full-time academic staff shall not undertake any work of whatsoever nature outside approved teaching, study or research work, including ex-gratia community work while they are employed by the FNU, without the written permission of their Dean.

3.4 Subject to S4 of this policy, FNU recognises employee ownership of rights in works of authorship by employees, such as academic articles, books including textbooks, all works of fiction

and non-fiction including creative works such as poetry, lyrics, musical compositions, and all visual works of art, whenever and wherever such works are produced to the extent that such production was not done with substantial use of FNU resources, financial support or FNU personnel beyond the level of common resources provided to staff.

3.5 Subject to S4 of this policy, the right of ownership in any work of the following description vests with the FNU:

3.5.1 Any work of authorship that is created with significant and substantial use of FNU resources, financial support or FNU personnel beyond the level of common resources provided to staff.

3.5.2 Any work of authorship that is specifically created or specifically commissioned for use by the FNU.

3.5.3 Any work of authorship that is created under the terms of a sponsored project where the terms of the sponsored project require that ownership or rights be held in the name of the FNU.

3.5.4 Any work created by an officer of management or administration for the specific purpose of management or administration.

3.5.5 Any work created by a support staff member acting within the scope of his or her employment generally.

3.6 If the categories of works specified in s3.5 above are dealt with by the FNU for purposes of generating revenues specifically and directly from the use of the specific works, or which generate commercial gains for the FNU from their specific and direct use, they shall be subject to the revenue sharing provisions specified in section 7 below.

3.7 Ownership of rights to authorship, creation, invention or discovery in the course of or pursuant to a specifically sponsored research or other agreement shall be according to the terms of such agreement.

4.0 Patents

4.1 All patentable or potentially patentable inventions conceived or first reduced to practice in whole or in part by employees of the FNU in the course of their FNU responsibilities or with more than incidental use of FNU resources, shall be disclosed in a timely manner to the FNU.

4.2 Patent rights to any invention are with the inventor/author as long as it is

4.2.1 not created, or developed, or discovered, or written in the course of a sponsored research; or

4.2.2 not created, or developed, or discovered, or written in the course of any approved contractual agreement between the FNU and any party outside the FNU; or

4.2.3 not created, or developed, or discovered, or written pursuant to a written agreement with the FNU providing specifically for a transfer of copyright or ownership of Intellectual Property to the FNU; or

4.2.4 not created, or developed, or discovered, or written by an employee within the normal scope of his/her employment; or

4.2.5 not created, or developed, or discovered, or written with the significant use of funds or facilities administered by the FNU.

4.3 Patent rights to any creation, invention, discovery, or authorship in the course of or pursuant to a specifically sponsored research or other agreement, shall be according to the terms of such agreement.

5.0 Works done in Private Facilities

5.1 An employee, in his own time and with his own resources, has the right to carry out intellectual pursuits in private facilities that comprise, but are not restricted to, an employee's private library, laboratory or workshop.

5.2 Rights to any creation, invention, discovery, development or authorship done exclusively in an employee's private library or private laboratory/workshop shall be determined on the basis of the extent of FNU's time, resources and funds utilised in its creation, invention, discovery, development or authorship.

5.3 It shall be the responsibility of the employee to inform, in writing, the FNU of any potentially rightable work being undertaken in private facilities of an employee. A failure to inform the FNU of such work being done within a month of it being commenced, shall deem the creation, invention, discovery or authorship to be done at the FNU.

5.4 The FNU shall not unduly place barriers to any employee working in his or her private facility(ies) as long as the employee satisfactorily carries out his/her allocated duty at the FNU.

6.0 Significant and Substantial Use of FNU Administered Resources

6.1 Except as provided for in

6.1.1 a contractual agreement between the FNU and its employees and/or students, or

6.1.2 a contractual agreement with external sponsors that is approved by the FNU,

6.1.3 intellectual property that is developed by FNU employees (whether full-time or part-time, including visitors) or by FNU students, or by others participating in FNU programs, using significant funds or facilities administered by the FNU shall vest in the FNU.

6.2 Textbooks developed in conjunction with class teaching are excluded from the 'substantial use' or 'significant use' test, unless such textbooks were developed using FNU-administered funds paid specifically to support textbook development.

6.3 As a general rule, any creation, invention, discovery or software development, or other patentable or copyrightable material, or tangible research property will not be considered to have been developed using FNU administered funds or facilities if

6.3.1 only a minimal amount of unrestricted funds has been used; or

6.3.2 the Intellectual Property has been developed outside of the assigned area of research of the creator(s), inventor(s), discoverer(s), developer(s) or author(s) under a sponsored project; or

6.3.3 only a minimal amount of time has been spent using insignificant FNU facilities or only insignificant facilities and equipment have been utilised; or

6.3.4 the development has been made on the personal, unpaid time of the creator(s), inventor(s), discoverer(s), developer(s) or author(s); or

6.3.5 the creation or invention or discovery or development or authorship has been done as a direct consequence of a research fund approved by the FNU's Research Committee.

6.4 As a general rule, the ordinary use of office, libraries, machine/work shop facilities, and of non-specialised desktop personal computers are not regarded as forming part of the substantial or significant use of funds or facilities administered by the FNU unless such use consumes any

additional expenditure or funds or staff time over and above incidental or normal utilisation of resources and/or time, or common resources provided. Any expenditure of funds or staff time that is over and/or above the common resources provided is to be countered as comprising project specific use of funds/facilities.

6.5 The issue of whether or not a substantial or significant use of FNU administered funds or facilities were used in the creation, invention, discovery or authorship of a product, will be determined, in writing, by the Dean of the College, or the head of the Laboratory/Centre. Any dispute in this determination shall be resolved by the Director, whose interpretation and/or decision shall be final.

6.6 If ownership rights are vested in the FNU, it shall, if so requested by the employee(s) involved in the project, acknowledge those who have made a substantial creative contribution to the work.

7.0 Revenue Sharing

7.1 An employee who is a rightholder of his or her works under this Policy may commercialise the work(s), without the authority or permission of the FNU, so long as the FNU's name is not used in connection with any marketing or with the works made available, other than to identify the employee as an employee of the FNU.

7.2 Except for creations, inventions, discoveries and developments under approved external contracts, irrespective of

7.2.1 whether intellectual property right is vested with an employee or student or visitor; or

7.2.2 whether the intellectual property right is vested with the FNU.

7.2.3 Revenues from commercial gains shall be shared between the FNU on the one part, and the creator or the inventor or the discoverer or developer or the author on the other part, as provided for under s7.3, s7.4 and s7.5.

7.3 For all intellectual property whose right vests with the FNU:

7.3.1 Ten (10) percent of any gross revenue from any commercial gain from any right ownership shall go to the specific creator(s), inventor(s), discoverer(s), developer(s), author(s) of the product, which is the subject matter of the intellectual property right.

7.3.2 Ten (10) percent of any gross revenue from any commercial gain from any right ownership shall go into the research/consultancy funds of the researcher/creator/inventor/discoverer/developer/author; such a fund shall be maintained as a trust fund by the Finance Manager of the FNU. The researcher can draw from this fund for any intellectual pursuit.

7.3.3 Ten (10) percent of any gross revenue from any commercial gain from any right ownership shall go into the research/consultancy fund of the College/ Centre/section to which the researcher/creator/inventor/ discoverer/ developer/author belongs or under which the work was produced; such a fund shall be maintained as a trust fund by the Finance Manager of the FNU. The College/Centre can draw from this fund for any intellectual pursuit.

7.3.4 The balance of any revenue (i.e. 70% of the gross revenue) shall go to the FNU. The FNU shall cover any cost of realising the commercial gains from the intellectual property vested with the FNU.

7.3.5 If the employees listed in s7.3.1 can not be specifically identified, then the employee shares identified in s7.3.1 and s7.3.2 shall be placed in the College/ Centre/Section under whose control the material was produced.

7.4 For all intellectual property whose right vests with the creator/investor/ discoverer/ developer/author:

7.4.1 Ten (10) percent of any gross revenue from any commercial gain from any right ownership shall go to the FNU.

7.4.2 Ten (10) percent of any gross revenue from any commercial gain from any right ownership shall go into the research/consultancy funds of the researcher/creator/inventor/discoverer/developer/author; such a fund shall be maintained as a trust fund by the Finance Manager of the FNU. The researcher can draw from this fund for any intellectual pursuit.

7.4.3 Ten (10) percent of any gross revenue from any commercial gain from any right ownership shall go into the research/consultancy fund of the College/Centre to which the researcher/creator/inventor/ discoverer/developer/ author belongs or under which the work was produced; such a fund shall be maintained as a trust fund by the Finance Manager of the FNU. The College/ Centre can draw from this fund for any intellectual pursuit.

7.4.4 The balance of any revenue (i.e. 70% of the gross revenue) shall go to the researcher/creator/inventor/ discoverer/developer/author, who shall cover any cost of realising the commercial gains from the intellectual property vested with him/her, as well as be responsible for any statutory payments like taxation.

7.5 For all consultancies undertaken by FNU employees:

7.5.1 Five (5) percent of the gross consultancy sum shall go to the FNU, without any consideration for any provision other than common use facilities.

7.5.2 Five (5) percent of any gross revenue from any commercial gain from any right ownership shall go into the research/consultancy funds of the researcher/creator/inventor/discoverer/developer/author; such a fund shall be maintained as a trust fund by the Finance Manager of the FNU. The researcher can draw from this fund for any intellectual pursuit.

7.5.3 Five (5) percent of any gross revenue from any commercial gain from any right ownership shall go into the research/consultancy fund of the College/ Centre to which the researcher/creator/inventor/ discoverer/developer/ author belongs or under which the work was produced; such a fund shall be maintained as a trust fund by the Finance Manager of the FNU. The College/Centre can draw from this fund for any intellectual pursuit.

7.5.4 The balance of any gross consultancy sum (i.e. 85% of the gross revenue) shall go to cover the costs of the project; the consultant shall be responsible for any statutory payment like taxation on net income, or withholding tax.

7.6 For joint works that result in intellectual property rights in the creator, inventor, discoverer, or developer, where the creator, inventor, discoverer or developer is a team, the following provisions shall apply:

7.6.1 A project leader must inform the FNU in writing, endorsed by all the members of the team, within two months of the commencement of a project, of the composition of the team, the identity of the team leader, and the proportion in which any emerging revenue sharing is anticipated. It is, however, not the responsibility of the FNU to apportion revenues amongst the team participants.

7.6.2 If the team comprises employees of the FNU, it shall be the responsibility of the principal of a project to actually share the portion of the revenue amongst participants and collaborators in a project.

7.6.3 If the team comprises employees of the FNU and individuals or organisations outside the FNU, it shall be the responsibility of the principal of a project to determine the sharing of the portion of the revenue amongst participants and collaborators in a project.

7.6.4 In cases of joint projects involving employees from more than one College/ section, funds created under s7.3.3, s7.4.3, and s7.5.3 shall be on the basis of the declaration given in s7.6.1.

7.6.5 The FNU shall not be responsible in any way for any distribution of revenues amongst the team members, unless any creation, invention, discovery or development results from work incidental to other work or other project(s).

7.7 The revenue sharing provisions shall

7.7.1 in the case of continuing employment of the employee with the FNU, continue for the entire duration of an employee's employment with the FNU.

7.7.2 in the case of an employee ceasing employment with the FNU:

a. For provisions under section 7.3 above, continue for a period of five years after an employee leaves FNU for whatever reason, unless on departure, a written agreement was made between the FNU and the employee on revenue sharing after five years from the date of departure of the employee.

b. For provisions under section 7.4 above, unless the employee amends this provision in writing anytime during his/her lifetime, continue without being extinguished for a period of 50 (fifty) years.

7.7.3 In the case of the death of a revenue recipient, the estate of the deceased employee shall, subject to s7.6.2, be the recipient of the employee's revenue share.

7.7.4 In the case of an employee ceasing to be employed by the FNU, all research/ consultancy funds created under s7.3, s7.4 and s7.5 shall revert to the central fund of the FNU, unless the employee maintains a link with the FNU through adjunct, visiting or emeritus positions, in which case the transfer of the funds shall only be undertaken on the employee ceasing all affiliations with the FNU.

7.7.5 The declaration given on joint works (s7.6 above) shall be the basis of determining revenue shares under this section in cases where some members of a team depart FNU and some do not.

8.0 Institutional Works

8.1 Institutional works are those over which the FNU asserts right ownership.

8.2 The following categories of works comprise institutional works:

8.2.1 Materials published by the FNU or by sections of the FNU, irrespective of the individual components of the work on which the FNU specifically claims its rights.

8.2.2 Work created for a specific FNU use.

8.2.3 Works created by employees at the direction of the FNU for FNU purposes, such as materials for administrative use and computer software created by specifically employed programmers for use by the FNU (referred to as 'works for hire').

8.2.4 Works produced as a collaborative effort over time where authorship cannot be attributed to any one individual or group of individuals.

8.3 The following provisions guide the treatment of course content and courseware developed by employees:

8.3.1 Course content is the intellectual content of any unit, course or programme as taught, irrespective of the mode in which it appears, which is developed by employees of FNU. This includes examinable papers or materials developed by the employees of FNU.

8.3.2 Courseware is the set of tools and technologies used to present course content, and is independent of the content itself. This would include the various modes of expressing the course content, including any written, recorded or electronic formats.

8.3.3 The FNU asserts rights in course content and/or courseware, which may be created under the aegis of an employee of FNU.

8.3.4 The FNU recognises that course content and/or courseware may be developed and modified over a period of time and/or by multiple employees.

8.3.5 The intention behind asserting ownership right over course content and/ or courseware is to prevent unauthorised commercialisation of the same by employees, irrespective of whether they are employed by the FNU or after they leave the FNU.

8.3.6 Irrespective of right ownership, an employee has the right to use all course content and courseware he or she develops or creates in the normal course of creating, disseminating and preserving knowledge at the FNU.

8.3.7 The right to use the course content and courseware developed by an employee continues with the developer even when he or she departs the FNU, as long as he or she acknowledges that the materials were originally developed and/ or created at the FNU.

8.3.8 For course content and/or courseware developed or created while an employee is associated with another institution under any ordinary scholarly exchange (including visiting professorships and guest lectureship), the rights of the materials so created shall be determined by this policy in the context of the policy of the institution where the association was.

a. In such cases, the employee shall inform the FNU in writing of his or her intention to develop course content and/or courseware at another institution.

b. In all cases of conflict, subject to meeting the provisions of s8.3.8.1, the policies, if any, of the other institution shall prevail over the policies of the FNU to the extent of the conflict.

c. In cases where the employee has not informed the FNU of his or her intention of developing course content and/or course material in another institution, the Intellectual Property Policy of the FNU shall prevail in all cases, conflict or otherwise.

8.3.9 An employee may not teach any course or create any course or courseware for a commercial enterprise without the approval of his/her College Dean and the Officer Responsible for Research.

8.3.10 The right of the employee to use any course content and/or course ware is restricted to the right to use without any commercial gains. If there is any commercial gain emerging from the use of any course content and/ or courseware that an employee uses after leaving the FNU, the Revenues from such gains shall all be surrendered to the FNU, which shall utilise the provisions of s7 above to deal with revenue sharing.

8.3.11 The above applies only to institutional works as defined in s8.2. For noninstitutional works, a former employee is at liberty to deal with it as he or she pleases, as long as FNU's name is not utilised to market such products. Acknowledgment that the materials were developed while the ex-employee was an employee of the FNU is permitted.

9.0 Releasing Works to Public Domains

9.1 An employee who is a rightholder of his or her works under this Policy, is at liberty to place his or her creation, invention, discovery, writing or development in the public domain if he or she:

9.1.1 Believes that it would be in the best interest of the nation to do so.

9.1.2 And makes a case to the Officer Responsible for Research, that it would be in the best interest of the nation to do so. The overriding criterion that the Officer shall utilise in evaluating and considering the case is whether the intention of placing the material on the public domain is to advance (or undermine) the interests of the FNU.

9.2 An employee right holder may make the work freely available on non-commercial terms (that is, without remuneration of any kind to the rightholder), for free redistribution, without the authority or permission of the FNU, so long as the FNU's name is not used in connection with works so made available, other than to identify the employee as an employee or ex-employee of FNU.

10.0 Sponsored Research

10.1 The state may directly fund research at the FNU. In such cases, the FNU is obliged to report promptly to the appropriate state authority any creation, invention, discovery, or development conceived or reduced to practice during the course of a state sponsored research program. This provision only applies directly and specifically to state funded research and not to research funded by the FNU under its Research provisions.

10.2 Non-state agencies may fund research at the FNU. In such cases, FNU is obliged to report promptly to the appropriate sponsoring agency any creation, invention, discovery, or development conceived or reduced to practice during the course of a state sponsored research program.

10.3 In all cases, the researchers, creators, inventors, discoverers, and developers shall inform the FNU of the results first, and vest the responsibility of informing the sponsor of the research in the FNU.

11.0 Dispute Resolution

11.1 Resolution of any dispute resulting from this policy shall follow the following procedure:

11.1.1 In the first instance, the dispute, or the potential for a dispute, shall be reported to the project team leader.

11.1.2 If the project team leader can not deal to all parties' satisfaction, the dispute shall be reported to the Dean of the College under which the project is carried out, who shall resolve the issue.

11.1.3 If the Dean can not deal to all parties' satisfaction, the dispute shall be reported to the Officer Responsible for Research, who shall resolve the issue.

11.1.4 If the Officer Responsible for Research can not deal to all parties' satisfaction, the dispute shall be reported to the Director, whose decision shall be final and binding on all concerned.

12.0 Administration of FNU Intellectual Property Policy

12.1 The community of scholars and practitioners shall periodically, but not less than once every five years, review the IP policy in order to protect the interests of FNU and the interests of FNU stakeholders.

12.2 The Chairperson of the FNU Research and Publications Committee shall be the Officer responsible for the implementation of this policy.