

Intellectual Property Arrangements
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
Intellectual.property@pc.gov.au

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Dear Commission,

The Australian Technology Network of Universities (ATN) commends the Productivity Commission on their comprehensive draft report on Australia's Intellectual Property Arrangements. As stated in the ATN's submission to the inquiry, the ATN supports the Commission's proposed approach of supporting clear, flexible and transparent models of IP management so that outcomes of research have every opportunity to deliver economic, social and environmental benefits.

Open access for publicly funded research

Regarding the recommendation for an open access policy for publicly funded research (draft recommendation 15.1), as noted in the report, both the ARC and NHMRC have been operating open access policies as part of their research funding requirements since 2013. Further, in the most recent Excellence for Research in Australia exercise (ERA 2015), institutions were required to indicate whether a submitted research output had been made available in an open access repository.¹ While this data was not used in ERA evaluations it provides an interesting insight into the state of open access across research outputs at Australian Universities (see Figure 1).

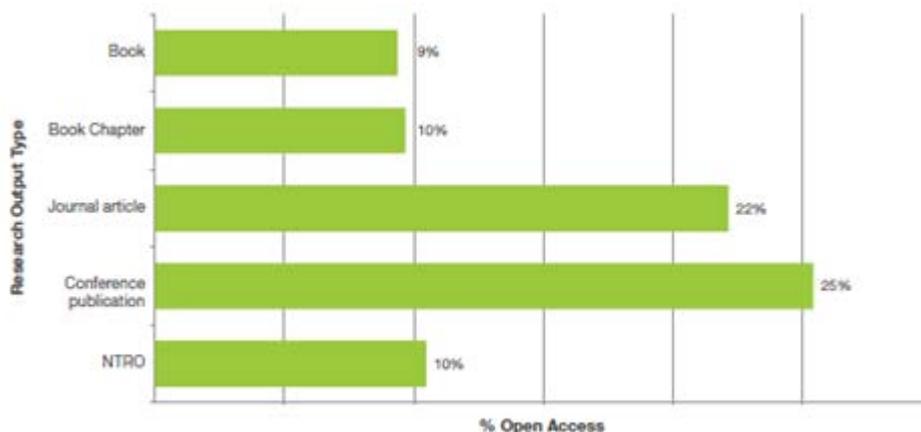


Figure 1. Percentage of Open Access Research Outputs in ERA 2015 Submissions

Source: Australian Research Council,

http://www.arc.gov.au/sites/default/files/filedepot/Public/ERA/ERA%202015/ERA_2015_National_Report/ERA2015_Section1.pdf

¹ Australian Research Council (2016) *The State of Australian University Research 2015–16: Volume 1 ERA National Report*,

http://www.arc.gov.au/sites/default/files/filedepot/Public/ERA/ERA%202015/ERA_2015_National_Report/ERA2015_Section1.pdf, p. 82

Depending on the output type, percentages ranged between 9 and 25 per cent (although, as cautioned by the ARC, since this was the first ERA where open access data of this nature was collected, some institutions had to retrospectively report their data bringing reliability into question). Furthermore, the ERA 2015 reporting period for research outputs spanned outputs from 2008 to 2013, so the figures are unlikely to capture the full effect of the ARC and NHMRC's Open Access Policies.

Given these shifts towards open access, the ATN Universities are supportive in-principle with broadening open access requirements to publicly-funded research by state and territory governments, in addition to nationally funded competitive research.

Software R&D Patents

In regards to the draft recommendation 8.1 to amend s. 18 of the *Patents Act 1990* (Cth) to explicitly *exclude* business methods and software from being patentable subject matter, the ATN are concerned about the proposed changes and its potential effect on university-business partnerships. The current systems allows businesses to own software IP and file patent applications on behalf of the university researchers creating new software. If software patents were abolished, businesses' willingness to partner with universities in the Australian market may be compromised because they know that as a public institution, universities need to publish and yet this leaves them with no protection for the Australian market.

If companies can protect their investment in software R&D through patents, then they may be more willing to partner with universities that need to publish the research. If businesses are not able to receive software patent protection, it may lead to either a reduction in publications from industry collaborative research, or businesses simply not collaborating in those areas in Australia and taking their business elsewhere. Given the Productivity Commission's aim to remove barriers to university-business collaboration, the ATN does not support a blanket approach to patent illegibility for computer software.

Standardised approaches to IP

Noting the discussion in section 15.3 of the draft report on the challenges in improving access to publicly-funded research, the ATN recognises that IP is one of the major barriers for businesses partnering with universities.

As such, in an Australian first, the ATN have united to take a standardised approach to Intellectual Property. The ATN IP Principles make it clear that ATN universities do not always take a blanket approach to IP and that a range of IP models will be explored to best suit a given partnership.

The approach is aimed at making it simpler, both for industry to approach ATN universities to solve their problems with new research, and for innovations generated by research across our universities to be commercialised by industry.

The ATN universities' approach to managing intellectual property is based on the following principles:

1. We actively encourage students and staff to undertake research that is relevant to challenges faced by society and in partnership with industry, government and community groups.
2. As guided by our industry partners, we encourage them to own and take the lead in commercialisation of intellectual property generated from industry funded research when they are best placed to do so.
3. Where access to university owned or jointly owned IP is necessary or beneficial for commercialisation we support access to the IP based on fair and equitable terms, in a timely manner.
4. Our interactions with industry will be governed by a transparent, flexible and user-friendly system that supports and encourages engagement using a range of IP models.
5. Each university will make public our Intellectual Property Policies and Standard Commercial Agreement templates, to provide a simple and transparent framework.
6. We actively encourage and promote an entrepreneurial culture for our staff and students. This includes a system of support to facilitate the creation of new ventures where our staff and students are appropriately involved.
7. All partnerships and resultant commercial agreements will be developed and negotiated in a prompt manner and in keeping with these core principles.

Acknowledging the work already done by the likes of IP Australia with Source IP and the Department of Industry, Innovation and Science with the IP Toolkit, the ATN supports the Productivity Commission's draft finding that model agreements on intellectual property would be beneficial for making IP more transparent to Australian industry and the broader community. Care would need to be taken to ensure that this standardised approach is not too prescriptive, and the ATN suggests building on the work already done via the IP Toolkit. Noting that the current iteration of the IP Toolkit is most useful for an SME audience, different model agreements could be developed to target specific audiences.

The ATN would like to thank the Commission for the opportunity to comment of the draft report on Intellectual Property Arrangements.

If you have any queries or would like to discuss this submission further, please do not hesitate to call me

Yours sincerely,

Renee Hindmarsh

ATN Executive Director