Intellectual Property Policy

Section 1 - Purpose

(1) The purpose of this Policy is to:

a. enable the University of Canberra (University) to identify, protect, manage and Commercialise its Intellectual Property;
b. set out the entitlements of Staff, Students, Affiliates and the University in relation to Intellectual Property;
c. support research and innovation within the University; and
d. guide the allocation of the Net Proceeds of Commercialisation of Intellectual Property.

(2) The University aims to encourage an environment in which learning, teaching, scholarship and research will flourish and adhere to the principle that knowledge and ideas should be made available for the benefit of the University community and used to maximise the benefits to the public.

(3) This Policy aims to provide a cooperative approach to respect and reward those within the University community who generate Intellectual Property and to facilitate, where appropriate, the Commercialisation of Intellectual Property created by Staff, Students and Affiliates.

Section 2 - Scope

(4) This Policy applies to all Staff, Affiliates, and Students of the University. All Intellectual Property created prior to the effective date of this Policy will be governed by the terms of the Intellectual Property Policy in force at that time.

Section 3 - Principles

Ownership of Intellectual Property Created by Staff

(5) Except as otherwise provided in a separate agreement, the University owns all Intellectual Property created or originated by Staff:

a. in the course of employment by the University;
b. using University Resources;
c. at the specific request or direction of the University; or
d. as part of a university research project supported by funding obtained or provided by the University.

(6) The University does not assert ownership over the Intellectual Property in Scholarly or Creative works, unless:

a. the Creator has been engaged specifically by the University to create such work (an example of these are Course materials); or
b. the relevant work is subject to an overriding contractual obligation between the University and a third party.

(7) Where the University does not assert ownership in Scholarly Works or Creative Works, it is entitled to a free, irrevocable, ongoing, non-exclusive right to use the relevant work for the University's teaching, research and promotional purposes.

(8) In the absence of a specific agreement to the contrary, the University owns all Intellectual Property in Course Materials.

(9) A Staff member may only use, disclose or Commercialise Intellectual Property owned by the University in accordance with the relevant and applicable Procedure.

Ownership of Intellectual Property created by Students

(10) Except as otherwise provided in this Policy, Students own the Intellectual Property created or originated by the Student.

(11) The University owns Intellectual Property created by a Student where:

a. the Student has entered into an agreement with the University which specifies the University ownership of the Intellectual Property related to or arising from their activities; or
b. the Intellectual Property is created using University Background Intellectual Property.

(12) Where the terms of an agreement require the University to own or assign Intellectual Property rights owned by a Student, the University may require the Student to assign their ownership interest to the University in order for the Student to be able to participate in certain projects. Where a Student assigns Intellectual Property to the University, the Student will be treated as Staff in accordance with clauses 5 to 9 of this Policy.

(13) Where the University requires, for its purposes, the use of Intellectual Property rights owned by a Student, the University may require the Student to licence the Intellectual Property to the University. The licence will be on terms negotiated, in good faith, between the Student and the University.

(14) Where a Student is also a Staff member and the subject matter of the Student's study is similar to the subject matter of the work for which the Student is employed, the Intellectual Property created by the Student will be owned by the University in accordance with clauses 5 to 9 of this Policy.

(15) If required by the University, Students must execute an agreement or do everything reasonably necessary to demonstrate or prove ownership of Intellectual Property by the University, secure Protection of Intellectual Property owned by the University or assist the University to develop or Commercialise the Intellectual Property owned by the University.

Ownership of Intellectual Property created by Affiliates

(16) Except as otherwise agreed in a separate agreement, the University owns all Intellectual Property created or originated by Affiliates where:

a. generation of the Intellectual Property has required use of University Resources;
b. generation of the Intellectual Property has resulted from the use of Intellectual Property owned by the University;
c. the Intellectual Property is a component of Intellectual Property generated by a team of which the Affiliate is a member and other members are Staff; or
d. the Intellectual Property has been generated as a result of any funding provided by or obtained by the University.

(17) If required by the University, Affiliates must execute an agreement or do everything reasonably necessary to demonstrate or prove ownership of the University of Intellectual Property owned by the University, secure protection of Intellectual Property owned by the University or assist the University to develop or Commercialise the Intellectual Property owned by the University.

Creator's Obligations

(18) Creators of Intellectual Property that is owned by the University must ensure that appropriate records and documentation in relation to the Intellectual Property are created, maintained and accessible to Staff including the Intellectual Property Officer.

(19) If required by the Intellectual Property Officer, Staff must execute an agreement or do everything reasonably necessary to demonstrate or prove ownership of the University of Intellectual Property owned by the University, secure Protection of Intellectual Property owned by the University or assist the University to develop or Commercialise the Intellectual Property owned by the University.

(20) Creators must promptly notify in writing the Intellectual Property Officer when they create an Intellectual Property that is owned by the University that may be capable of Protection or Commercialisation.

(21) Creators must assist the University in securing the Protection or Commercialisation of Intellectual Property that is owned by the University including by assisting in the preparation of patent specifications; providing information required and assisting in negotiations with commercial partners.

(22) Creators must not:

a. use or disclose Intellectual Property owned by the University in any manner which would:
    i. prejudice its Protection, enforcement, Commercialisation or other development; or
    ii. contravene any legislative requirement; or
b. apply for any form of Protection for, Commercialise or otherwise deal with, the Intellectual Property owned by the University in any manner inconsistent with the University's rights.

(23) Staff will ensure that Course Materials are published or otherwise made accessible to the general public, including by electronic means, only with prior University written approval.

(24) The University does not assert ownership of Pre-Existing Intellectual Property. Originators must advise the Intellectual Property Officer of the existence of Pre-Existing Intellectual Property that an Originator brings to the University within 30 days of their employment, enrolment or appointment. If the Intellectual Property Officer is not informed of any Pre-Existing Intellectual Property within this period, any Intellectual Property developed or disclosed during the period of employment, enrolment or appointment will be treated as owned by the University.

Commercialisation by the University

(25) Where the University Commercialises its Intellectual Property, the Net Proceeds of Commercialisation received by the University will be disbursed as follows:

a. 40% to the Creators determined in accordance with the relevant Procedures;
b. 30% to the University; and
c. 30% to the relevant Faculty of the Creator.

(26) This distribution applies regardless of whether the Creator is still associated with the University at the time of Commercialisation.

(27) Clauses 25 and 26 do not apply to Commercialisation by the University of Course Materials.

Moral Rights

(28) The University and its Staff will respect Moral Rights and take reasonable steps to ensure others respect Moral Rights.

Indigenous Intellectual Property and Knowledges

(29) The University and its Staff will:

a. ensure that any academic activities that include Indigenous peoples and their Intellectual Property and Knowledges are respectful and that the protocols, processes and procedures involved in accessing the Intellectual Property and Knowledges are respectful and followed faithfully;
b. ensure that any use of Indigenous Intellectual Property and Knowledges is agreed to by the person or people whose knowledge is being shared or used and ensure that their informed consent has been freely given, is properly recorded and is renegotiated in a timely manner;
c. ensure that all Indigenous Knowledge is treated according to the desires of the custodians including regular renegotiation of permissions with the custodians;
d. ensure that the University expresses appreciation of the knowledge of Indigenous people through the relationships that staff members and students develop with Indigenous people and communities to establish best practice models for collaboration;
e. arrange for Indigenous peoples to benefit reciprocally when they share Indigenous Intellectual Property and Knowledges with the University, through an equitable relationship that appropriately considers, remunerates and acknowledges all contributions;
f. ensure that consistently with the principle of reciprocity the custodians of Indigenous Knowledge that is used by the University in research and/or teaching are compensated appropriately for their time and knowledge;
g. recognise that publication entails particular risks and threats to some Indigenous Intellectual Property and Knowledges and ensure that before publishing any work that includes Indigenous Intellectual Property and Knowledge, properly evidenced permission is obtained from the custodians and that any concerns custodians have about publication are respected and published only after mutual agreement has been reached and recorded;
h. ensure that the custodians are acknowledged in all publications and teaching materials if they desire to be acknowledged;
i. ensure that the commercialisation pathways and sharing of benefits arising from Indigenous Intellectual Property and Knowledges are fully agreed and beneficial to custodians and other involved Indigenous peoples with due regard to the level of their individual or collective contribution;
j. comply with applicable legislation, national and international standards and protocols and prevailing guidelines of appropriate conduct concerning the use of indigenous cultural heritage, traditional knowledges and cultural expressions; including the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research;
k. respond promptly to representations by Indigenous people regarding any need to review or to make changes to this Policy in relation to Indigenous Intellectual Property and Knowledges; and
l. commit to the inclusion and participation of appropriate Indigenous authorities in all substantive matters relating to Indigenous Intellectual Property and Knowledges.

Information and Education

(30) The University will establish an Intellectual Property education program with the following objectives:

a. to generate a better understanding of Intellectual Property, and so contribute to the creation within the University of a more cooperative and productive environment for learning, teaching, scholarship and research;
b. to alert Staff and Students to any changes to this Policy; and
c. to alert Staff and Students to their rights, responsibilities and opportunities in relation to Intellectual Property.

(31) The University will review periodically the effectiveness of the program and activities undertaken under clause 30 above.

Dispute Resolution

(32) Except for a Student dispute related to Intellectual Property created by a Student which will be appealed and considered under the Student Grievance Resolution Policy of the University, in the event that any dispute arises in relation to the interpretation or operation of this Policy, the person claiming the existence of a dispute must notify the Intellectual Property Officer in writing by email of the nature and details of the dispute. Notification of the existence of a dispute is to be submitted as quickly as possible after a dispute has arisen and in any case within 14 days of a dispute arising.

(33) The Intellectual Property Officer must, within 21 days of receiving notification of a dispute, convene a meeting of all those notified of the existence of the dispute and, at the discretion of the Intellectual Property Officer, other persons as may be deemed necessary or relevant to addressing the issues of the dispute, to try to resolve the dispute.

(34) In the event that the meeting in clause 33 does not take place within the period specified, or that the meeting and subsequent action fails to resolve the dispute within 30 days of the meeting, the dispute shall be referred to the Vice-Chancellor for further action.

(35) The Vice-Chancellor shall consider the issues of any dispute referred under clause 34 within 30 days and make a determination.

(36) Nothing in clauses 32 to 37 of this Policy limit the right of any Staff member, Student or Affiliate to use other available agencies and processes consistent with relevant Commonwealth legislation.

(37) All matters associated with the resolution of Intellectual Property disputes will be held confidential.

Section 4 - Procedure

(38) Refer Intellectual Property Procedure.

Section 5 - Definitions:

Term	Definition
Affiliates	refers to the persons given Adjunct appointments in accordance with the University's Adjunct Appointment Policy.
Background Intellectual Property	refers to all Intellectual Property Rights owned by or licensed to the University prior to the creation of new Intellectual Property.

Term	Definition
Commercialise	means to exploit commercially, including (without limitation): • in relation to an Intellectual Property right: the exercise of all the rights exclusively granted to the holder of such Intellectual Property rights by the laws of the jurisdiction in which the Intellectual Property right subsists, including where permitted the right to sub-license those rights; • in relation to a product, kit, apparatus, substance, documentation or information resource (or any part of such materials): to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of it; and • in relation to a method or process: to use the method or process or to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of a product, kit or apparatus the use of which is proposed or intended to involve the exercise of the method or process. 'Commercialisation' has a corresponding meaning.
Commercialisation Costs	means the cost actually or directly attributable to the Registration or Protection of Intellectual Property rights or the Commercialisation of Intellectual Property. Such costs include, but not limited to: • registration fees; • legal fees; • patent attorney fees; • proof of concept funding; • financial and technical advice; • insurance; • marketing and travel; • creation of prototypes; • taxes; • bank fees; and • transaction fees.
Commercialisation Proceeds	refers to the gross income or other commercially valuable consideration such as but not limited to royalties, licence fees, equity, received as a result of or in connection with the Commercialisation of Intellectual Property.
Course Materials	refers to the material produced by Staff for teaching and learning purposes, including but not limited to slideshows, photographs, maps, diagrams, handbooks, manuals, unit outlines, exercises, promotional and advertising brochures, lecture recordings and multimedia items regardless of whether these materials are still in development or have been completed.
Creative Works	refers to the works of a purely artistic or aesthetic nature (such as paintings and sculpture), and which are not otherwise included in the definition of Scholarly Works under this Policy.
Indigenous Intellectual Property and Knowledges	means Indigenous peoples' rights to their heritage, consisting of intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural identity, including the rights set out in Article 31 of the United Nations (UN) Declaration of the Rights of Indigenous Peoples. Indigenous Intellectual Property and Knowledges cover those of Aboriginal and Torres Straights Islander peoples. Indigenous Intellectual Property and Knowledges are intimately linked to land, cultural heritage and environment, and to cultural property. Indigenous communities possess unique features of their knowledge, creative expressions and innovations that emphasize communal rights.
Intellectual Property	includes any proprietary right concerning: • patents under the Patents Act 1990 (Cth); • information that is subject to an employee's duty of fidelity to the employer; • copyright vested by virtue of the Copyright Act 1968 (Cth); • trade marks registered under the Trade Marks Act 1995 (Cth); • unregistered trademarks used or intended for use in businesses; • designs registered under the Designs Act 2003 (Cth); • new plant varieties under the Plant Breeder's Rights Act 1994 (Cth); • circuit layouts (computer chips) under the Circuit Layouts Act 1989; • trade secrets and confidential information protected by equity or the common law; and • all other rights resulting from intellectual activity in the industrial, commercial, scientific, literary and artistic fields.
Moral Rights	has the meaning specified in the Copyright Act 1968 (Cth) and includes the right of attribution of authorship in respect of the work; the right not to have authorship of the work falsely attributed; and the right of integrity of authorship in respect of the work.

Term	Definition
Net Proceeds	means the difference between Commercialisation Proceeds received and all costs and expenses incurred by, or on behalf of, the University in deriving such Commercialisation Revenue, including the cost and expenses of developing, protecting and commercialising the relevant Intellectual Property.
Creator	means the Staff member, Student or Affiliate who creates the Intellectual Property which is subject to this Policy, whether alone or jointly with another person or persons.
Pre-Existing Intellectual Property	means Intellectual Property owned by a Staff member, Student or Affiliate prior to the date of their employment as a Staff member, enrolment as a Student or appointment as an Affiliate.
Procedure	means the 'Intellectual Property Procedure', the 'Intellectual Property Commercialisation Guidelines' and any other document developed pursuant to this Policy to or to implement this Policy as approved by the Director, Research Services.
Protection	means processes, including without limitation patenting, that establish ownership of; or control access to rights in respect to Intellectual Property so as to contribute to or enable the viability of Commercialisation of the Intellectual Property.
Research Outputs	means publication, report or creative work that meets the definition of research and is eligible for inclusion in HERDC and ERA government reports.
Scholarly Works	means a works intended for academic publication (e.g. article, book, manuscript or manual regardless of format).
Staff	means a person who is employed by the University.
Student	means a person enrolled as a student in an approved course (including undergraduate and postgraduate) at the University or in a course or program of study conducted by or on behalf of the University; any casual learner participating in any formal or informal teaching programs offered by the University or on behalf of the University; and, where relevant, an exchange Student or non-award Student.
University	University of Canberra (ABN 81 633 873 422).
Intellectual Property Officer	Deputy Vice-Chancellor from time to time.
University Resources	means those resources resulting from the expenditure of the University's funds and include equipment, accommodation, administrative facilities, support facilities (i.e. library, computing, power and telephone) and existing University Intellectual Property. It includes the provision of relief from teaching, administrative or other responsibilities, but does not include the Creator's usual salary.

Status and Details

Status	Current
Effective Date	31st March 2023
Review Date	31st March 2024
Approval Authority	Council
Approval Date	31st March 2023
Expiry Date	To Be Advised
Custodian	Michelle Lincoln Deputy Vice-Chancellor
Responsible Manager	Faraz Hasan Director, Research Services Faraz.Hasan@canberra.edu.au
Author	Arvind Reddy Director, Research Services
Enquiries Contact	Nick Markesinis Policy Manager --- Policy