Intellectual Property Procedure

Section 1 - Purpose

(1) The purpose of the Intellectual Property Procedure is to support the Intellectual Property Policy and outline the manner by which Intellectual Property, created by University of Canberra (University) Staff, Students and Affiliates in the course of their employment by, or enrolment at, the University or through the use of University Resources, is to be protected, managed and commercialised.

Section 2 - Scope

(2) This Procedure applies to all Staff, Affiliates and Students of the University.

Section 3 - Policy

(3) Refer to the Intellectual Property Policy.

Section 4 - Procedure

Notification of Pre-Existing IP

(4) Notice by Creators of Pre-Existing Intellectual Property, in accordance with clause 24 of the Intellectual Property Policy, must be provided within 30 days from commencement of employment, enrolment, or appointment by the University by completing and submitting the Pre-Existing IP Notification Form to the Intellectual Property Officer. This notice will include a written warranty by the Creator that the use of Pre-Existing Intellectual Property does not infringe the rights of any third parties.

(5) In the absence of such notice, ownership of Pre-Existing Intellectual Property used or later disclosed by each member of Staff, Student or Affiliate will be evaluated under the Intellectual Property Policy effective at the time of receipt of notice.

Assignment of IP to the University

(6) If not otherwise assigned through the operation of the Intellectual Property Policy, any agreement or law, and if assignment of Intellectual Property is required to enable the University to comply with a contractual obligation, each Creator who creates Intellectual Property must:

a. assign to the University all rights, title and interest in the identified Intellectual Property; and
b. execute any and all documents required by the University to give effect to that assignment of Intellectual Property.

(7) In the event that a Creator fails to complete any documentation, or any action deemed by the University to be necessary for the assignment, protection, or management of commercialisation of Intellectual Property owned by the University, then the Vice-Chancellor has the right to complete and execute all such documents and do all such acts as

their attorney even if the University benefits from this power.

(8) Research Services will maintain a record of all agreements for the assignment of Intellectual Property executed under clauses 6 to 8 in this Procedure.

Student Participation in University Research Projects

(9) Where clause 12 of the Intellectual Property Policy applies, before a Student may participate in an externally funded research project undertaken by the University (Research Project), where the terms of the agreement regarding that Research Project require the University to own or assign Intellectual Property rights, the Student will be required to execute a Student Assignment of Intellectual Property Deed Poll (email EngageUC@Canberra.edu.au), or other form of agreement as required by the University, which at a minimum will require the Student to:

a. assign to the University his or her rights, title and interest in the Intellectual Property arising from his or her participation in the Research Project;
b. give consent to the University over the Student's Moral Rights subsisting in a work, to the extent that it relates to or affects the Research Project; and
c. grant a licence to the University (including the right to sublicence) to use any Pre-Existing Intellectual Property owned by the Student, to the extent it is used in the Research Project.

(10) It is the responsibility of the Staff member supervising the Student or leading the Research Project (i.e. Chief Investigator) to notify the Student about all requirements for participating in the Research Project and to ensure that the Student is given reasonable time to review all documentation and seek appropriate advice (including independent legal advice).

(11) A Student who assigns their Intellectual Property rights and gives consent in respect of any Moral Rights under clause 9 is, subject to any agreement to the contrary, entitled to a share of Net Proceeds in accordance with clauses 33 to 38 of this Procedure.

(12) If the Student does not agree to enter into a Student Assignment of Intellectual Property Deed Poll in accordance with clause 9 of this Procedure or does not respond to the request to do so, the University may decline to permit the Student to participate in that Research Project.

(13) The University will ensure that the provisions of the Intellectual Property Policy, the agreement between the University and the student and any other agreement regarding the Student's involvement in the Research Project will:

a. not hinder the academic progress of the Student; and
b. not affect the examination of the Student's thesis.

(14) Research Services will maintain a record of agreements executed by Students under clauses 9 to 14.

Disclosure of IP

(15) A Creator must report the creation of any new Intellectual Property to the Intellectual Property Officer where:

a. the new Intellectual Property may be patentable;
b. the new Intellectual Property may be capable of Commercialisation; or
c. disclosure is a legal requirement specified in a contract (Disclosed IP).

(16) In notifying the University of the Disclosed IP in accordance with clause 15, the Creator(s) must complete the Invention Disclosure Form and provide this to the Intellectual Property Officer.

(17) A Creator of Disclosed IP must not disclose the Disclosed IP to any other person or organisation; must uphold the confidentiality of the Disclosed IP; and must take all reasonable steps to maintain and protect the value of the Disclosed IP.

(18) The Disclosed IP will be entered in an Intellectual Property register (IP Register), which will be maintained by Research Services. A review of the Disclosed IP entered in the IP Register will be undertaken by Research Services annually.

(19) Once the Intellectual Property is entered in the IP Register, the procedures for protection and commercialisation of Disclosed IP under clauses 20 to 32 below will apply.

Protection of Disclosed IP

(20) A Creator who becomes aware of any unauthorised use of University owned Intellectual Property, including Disclosed IP, must promptly inform the Intellectual Property Officer.

(21) The Intellectual Property Officer, in consultation with the Creator(s), any other relevant University staff member(s) and external expert(s) (if required), will determine within 30 business days of receipt of the completed Invention Disclosure Form (the Evaluation Period), the need for Protection as well as the viability of any commercial opportunity identified for the Disclosed IP. If reasonably required, the Evaluation Period may be extended by the University at the Intellectual Property Officer's discretion.

(22) During the evaluation period, the Intellectual Property Officer, Research Services and the Creator will take all necessary steps to:

a. determine and verify ownership of the Disclosed IP; and
b. evaluate the need for, best mode and cost of Protection of the Disclosed IP. The Creator(s) must assist where required in the verification process.

(23) During the Evaluation Period, the Intellectual Property Officer, Research Services and the Creator(s) will do all things necessary to ensure that the disclosed Intellectual Property is treated as confidential, including by having any persons consulted during that period sign confidentiality agreements.

(24) The Intellectual Property Officer will inform the Creator(s) whether Protection of the Disclosed IP will be supported by the University within the Evaluation Period.

(25) If the University decides to support the Protection of the Disclosed IP, Research Services will facilitate the engagement of an external expert who will secure the appropriate Protection for the Disclosed IP. The Creator(s) must do all acts and sign all documents required for an application of Protection. The cost of initial Protection of the Disclosed IP under this clause will be borne by the University.

(26) If the University decides not to proceed with the Protection of the Disclosed IP, and the Disclosed IP is University owned Intellectual Property or has been assigned to the University by the Creator, the University will\assign the Disclosed IP to the Creator(s) following the procedures under clauses 39 to 43. Upon assignment of the Disclosed IP to the Creator(s), Protection of the Disclosed IP will be the responsibility and cost of the Creator(s).

Commercialisation of Disclosed IP

(27) When Disclosed IP is notified and entered in the IP Register, the Intellectual Property Officer, in consultation with the Creator(s), any other relevant University member(s)and external expert(s) (if applicable), will decide whether the University wishes to commercialise the Disclosed IP, including whether such Commercialisation will be by the University itself or in collaboration with or through a commercial partner.

(28) Where the decision is made to commercialise the Disclosed IP, the Creator(s) (including Students) will have the opportunity to participate in processes associated with the protection and commercialisation of the Disclosed IP and will be entitled to share in the Net Proceeds of Commercialisation in accordance with the Intellectual Property Policy and clauses 33 to 38 of this Procedure.

(29) The University will deal expeditiously, expertly and thoroughly with opportunities to Commercialise the Disclosed IP in which it asserts rights, and in so doing, seek optimal benefits for the Creator(s), the University and the wider community.

(30) The Creator(s) will work with Research Services to develop a commercialisation plan, which will include a description of the commercial application and unique competitive advantage, progress to date, any technical milestones and potential commercialisation opportunities. The commercialisation plan will be submitted to the Intellectual Property Officer for evaluation.

(31) The University, through Research Services, may seek external advice to ensure correct valuation of the Disclosed IP and that the terms and conditions of any commercial agreement entered serve the best interests of the University and the Creator(s).

(32) If the Intellectual Property Officer decides not to Commercialise the Disclosed IP, the Creator(s) will be given the opportunity to undertake the commercialisation thereof with external parties. If the Disclosed IP is University owned Intellectual Property, it shall be assigned to the Creator following the procedures under clauses 39 to 43.

Commercialisation Proceeds

(33) Benefits or proceeds received by the University from the commercialisation of Course Materials will be retained fully by the University to be utilised to support its core mission in teaching and research.

(34) Research Services will work with Finance & Analytics in maintaining a record of any Commercialisation Costs incurred by the University in relation to the Commercialisation of Disclosed IP.

(35) As contemplated in the Intellectual Property Policy, the Net Proceeds of Commercialisation of Disclosed IP received by the University will be disbursed as follows:

a. 40% to the Creator, and if more than one Creator, 40% to be shared among the Creators as per their agreement;
b. 30% to the University; and
c. 30% to the relevant Faculty or Research Centre of the Creator(s).

(36) The Creator(s)’s share of Net Proceeds of Commercialisation will be deposited in the bank account nominated by the Creator(s)and provided to Finance & Analytics.

(37) If it is not practical to disburse any of the Net Proceeds to the Creator(s), the University may determine other means of distributing the benefit, which may include, but is not limited to, the University holding those Net Proceeds in trust for the Creator(s).

(38) The right to a share of Net Proceeds as per the Intellectual Property Policy and clause 35 above applies regardless of whether the Creator(s) is still associated with the University. Any such Net Proceeds will be paid to a Creator’s estate if the Creator is deceased.

Assignment of University IP

(39) University owned Intellectual Property will be assigned to the Creator if the University decides not to:

a. protect the Disclosed IP as per clauses 20 to 26 of this Procedure, or
b. proceed with, or continue with, the Commercialisation of the Disclosed IP as per clauses 27 to 32 of this Procedure (Assigned IP).

(40) Research Services will discuss and negotiate the terms and conditions of assignment, which will in all cases include the following:

a. a non-exclusive, royalty-free, world-wide licence in favour of the University to use the Assigned IP for education, teaching and research purposes;
b. a requirement on the Creator(s) or the commercial entity that is assigned the Assigned IP to pay to the University a future benefit amounting to 20% of the Net Proceeds from the Commercialisation of the Assigned IP; and
c. a requirement for the Creator(s) to report regularly to the University in relation to progress made with the Commercialisation of Assigned IP and the revenue entitlements of the University.

(41) The assignment of Intellectual Property to the Creator will only relate to that Disclosed IP specifically described in the relevant Invention Disclosure Form. The assignment will not cover Intellectual Property included in other Invention Disclosure Forms in the same area of research submitted by the same Creator.

(42) Research Services working closely with Legal to prepare an agreement with the Creator.

(43) Research Services will maintain a record of assignment of Intellectual Property agreements executed under clauses 39 to 43.

Dispute Resolution

(44) Student Intellectual Property related disputes will be appealed and considered under the University's Student Grievance Resolution Policy.

(45) In general, concerns, queries and disputes relating to the interpretation or operation of the Intellectual Property Policy and these Procedures are best dealt with in the first instance, at an informal level. Thus, Staff or Affiliates are advised to seek the assistance of their Faculty Executive Dean, or the Director, Research, who will endeavour to resolve their concerns, queries and Intellectual Property related disputes as quickly as possible.

(46) If the dispute cannot be resolved informally, the Staff or Affiliate may submit a written notice of the nature and details of the dispute to the Intellectual Property Officer, including any supporting document.

(47) Within 21 days from receipt of the notification of dispute, the Intellectual Property Officer will convene a meeting of all those notified of the existence of the dispute and any other persons which the Intellectual Property Officer believes is able to assist in the speedy and equitable resolution of the dispute.

(48) Following the meeting referred to in clause 47, the Intellectual Property Officer will issue a written order to:

a. confirm the agreements made to resolve the dispute; or
b. refer the dispute for further determination by the Vice-Chancellor if the dispute is not resolved within 30 days of the meeting convened under clause 47.

(49) The Vice-Chancellor will evaluate the dispute based on written documents submitted by the Staff member or Affiliate and any findings of the Intellectual Property Officer made available to the Vice-Chancellor.

(50) Within 30 days from receipt of the order of referral, the Vice-Chancellor shall render a decision on the dispute. The Vice-Chancellor's written decision shall be given to the Research Services for recording and delivery to the Staff

member or Affiliate concerned.

(51) All documents and discussions associated with the Intellectual Property disputes will be held confidential.

Management of University IP

(52) Subject to the relevant laws and procedures, the University, at its sole discretion, is entitled to manage the Intellectual Property it owns in any manner.

(53) Working with internal and external experts, Research Services is responsible for negotiating contracts between the University and the Staff member, Affiliates, Students and external parties in relation to the:

a. assignment to any other party of the University's right, title, and interest in any Intellectual Property owned by it;
b. prosecution, maintenance and defence of any application or grant of any type of Intellectual Property Protection for any Intellectual Property it owns;
c. appointment of agents to act on behalf of the University regarding the management and Commercialisation of Intellectual Property; and
d. Commercialisation of any Intellectual Property in any manner.

(54) A duly authorised agreement between the University and a third party may vary the operation of the Intellectual Property Policy and this Procedure, especially in relation to the ownership of Intellectual Property created in accordance with the terms of the agreement and the rights of the University in relation to ownership, use and management of that Intellectual Property.

(55) Research Services will maintain a record of all actions taken and resulting agreement for all Intellectual Property actioned and managed on behalf of the University.

Information and Education in Relation to IP

(56) Information in relation to the effect and operation of this Procedure may be sought in the first instance from Research Services who may refer a request for information to the University Intellectual Property Officer or such other party as may be deemed appropriate.

(57) The University, through the Director, Research will establish a flexible Intellectual Property education program to ensure that the provisions of the Intellectual Property Policy, this Procedure and relevant information on knowledge transfers and Commercialisation are made known to the University community, including through:

a. the People & Culture induction programs;
b. research student education programs;
c. sponsorship of annual workshops or other programs such as the Early Career Academic Researcher Development (ECARD) Program; and
d. the development of the University website, including guidelines on Intellectual Property management and Intellectual Property Commercialisation-related matters.

(58) Research Services will evaluate and report on the effectiveness of the Education Program to the Intellectual Property Officer.

Section 5 - Roles and Responsibilities

Subject Matter	Procedure or Action	Responsibility	Relevant Clause
Intellectual Property Officer	Decisions pertaining to Intellectual Property Officer	Deputy Vice-Chancellor	numerous
Notification of Pre-Existing IP	Notice (using Pre-Existing IP Notification Form) includes warranty of noninfringement of 3rd party Intellectual Property rights	Creator(s) be they Staff, Affiliate or Student	4 to 5 (inclusive)
	Receipt of notice	Intellectual Property Officer	4
Assignment of IP to the University	Assignment of Intellectual Property rights (if requested by Intellectual Property Officer)	Creator(s) be they Staff, Affiliate or Student	6
	Drafting, negotiation and execution and recording of Intellectual Property assignment agreements	Research Services	8
Student Participation in Externally Funded Research Projects	Inform Student of all requirements for participation in a Research Project	Staff supervising the Student	10
	Assignment of Intellectual Property created during Research Project (using Attachment B)	Student	9
	Drafting, negotiation and execution and recording of Intellectual Property assignment agreements	Research Services	9 to 14
Disclosure of Intellectual Property	Disclosure of Intellectual Property (using Invention Disclosure Form)	Creator(s) be they Staff, Affiliate or Student	15 and 16
	Recording of Disclosed IP in IP Register	Research Services	18
Protection of Disclosed IP	Evaluation and Assessment of Disclosed IP	University Intellectual Property Officer in consultation with University members and/or external experts as needed	21
	Inventorship determination and evaluate mode of Intellectual Property Protection	Research Services	22
	Render decision to support or not to support Intellectual Property Protection	University Intellectual Property Officer	24, 25 and 26
	Engagement of external expert for Intellectual Property Protection	Research Services, in accordance with Delegations of Authority Policy for external legal representatives	25
	Maintenance of IP Register	Research Services	18

Subject Matter	Procedure or Action	Responsibility	Relevant Clause
Commercialisation of Disclosed IP	Development of a Commercialisation plan for the Disclosed IP	Creator(s) with Research Services	30
	Render a decision to Commercialise	University Intellectual Property Officer in consultation with University members and/or external experts as needed	27
	Engagement of external legal expert for commercialisation	Research Services and Legal (in accordance with Delegations of Authority Policy)	31
	Drafting, negotiation and execution and recording of commercial agreement	Research Services and internal or external legal representatives as needed	31
Disbursement of Net Commercialisation Income	Recording of Commercialisation Costs in relation to Intellectual Property	Research Services working with Finance & Analytics as needed	34
	Disbursement of Creator's share in Net Proceeds, including holding share in trust for the Creator	Research Services and Finance & Analytics	35, 36 and 37
Assignment of University IP	Render a decision to assign University Intellectual Property (including determination of terms of assignment)	Intellectual Property Officer	39 and 42
	Drafting, negotiation and execution and recording of Intellectual Property assignment agreement	Research Services (working with internal as well as external legal experts as needed)	42
Dispute Resolution	Resolve student related Intellectual Property dispute	Executive Dean guided by the Student Grievance Resolution Policy. Appeals against decision of Executive Dean to Student Appeals Committee	44
	Informal meetings to resolve Intellectual Property disputes, queries, concerns	Executive Dean, or Director, Research Services	45
	Convening formal dispute resolution meetings and rendering of decision	University Intellectual Property Officer	47
	Decide appealed disputes	Vice-Chancellor	49 and 50
Management of IP	Evaluate and undertake commercialisation activities and maintain record of each Intellectual Property managed	Research Services	52 to 55
Education in relation to Intellectual Property Policy and Procedure	Establish and deliver an Intellectual Property Education Program	Research Services	57 and 58

Section 6 - Definitions

Terms	Definitions
Affiliates	Persons given Adjunct appointments in accordance with the University's Adjunct Appointment Policy.

Terms	Definitions
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, and Commercialisation has a corresponding meaning.
Commercialisation Costs	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 are 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 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 multi media items regardless of whether these materials are still in development or have been completed.
Creator	A Staff member, Student or Affiliate who creates the Intellectual Property which is subject to the Intellectual Property Policy and this Procedure, whether alone or jointly with another person or persons.
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); • Trademarks 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.
Net Proceeds	The difference between Commercialisation Proceeds received and all costs and expenses incurred by, or on behalf of, the University in deriving such Commercialisation Proceeds, including the cost and expenses of developing, protecting and commercialising the relevant Intellectual Property.
Pre-Existing Intellectual Property	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.
Protection	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.

Terms	Definitions
Staff	A person who is employed by the University.
Student	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	means Deputy Vice-Chancellor from time to time.
University Resources	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

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Effective Date	18th April 2023
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