

Intellectual Property Policy

INTRODUCTION

The Charles Darwin University Act 2003 empowers the University to create, develop, apply for, obtain and hold intellectual and industrial property and rights and enter into agreements or arrangements for their commercial exploitation on terms as to royalties, lump sum payments or otherwise that the Council thinks fit.

The University is committed to ensuring its intellectual property is properly protected, managed and where appropriate commercialised. The University is also committed to ensuring that the full value of any intellectual property is realised for the benefit of the University, in accordance with its mission, goals and objectives, as well as prevailing community and legislated standards of best practice.

The University is committed to providing an environment where innovation and scholarship flourish, where current staff members and students who contribute through the creation of intellectual property can be fairly rewarded and where benefits can flow to future staff members and students.

STATEMENT OF AUTHORITY

The authority behind this policy is the [Charles Darwin University Act 2003](#) part 3, section 15.

COMPLIANCE

This is a compliance requirement under the [Copyright Act 1968](#).

INTENT

The intent of this document is to set out the University's policy in relation to intellectual property created at the University. It is applicable to staff members, students and visitors.

RELEVANT DEFINITIONS

In the context of this document

Commercialisation expenses means patenting expenses; legal expenses; professional expenses including the fees of accountants, valuation advisers, commercialisation consultants, negotiators, and other intermediaries; travel and accommodation expenses incurred by staff members, students or consultants; taxation paid by the University, if any; and any proof-of-concept or seed funding, testing or other research costs incurred by the University as part of commercialisation and with the approval of the creators;

Commercialisation revenues means lump-sum or royalty income from a licensee and any sub-licensee; proceeds of the sale of the intellectual property; signing fees; milestone payment; minimum annual payments; reimbursement of patent prosecution and maintenance expenses; dividends upon shares owned by the University in a start-up company to which it grants a license; proceeds of sale of shares owned by the University in a start-up company to which it grants a license; and settlements from infringement proceedings;

Commissioned work means work requested by the University and for which a consideration is made to the creator/s. The consideration may include financial consideration and/or relief from teaching or other duties;

Confidential information means know-how, trade secrets or other proprietary information and background knowledge that is protected under common law and/or by a non-disclosure agreement with a third party;

Creator means a person or persons who have created / invented / authored intellectual property;

Custodian means the person or persons who, according to the Indigenous laws and customs concerned are responsible for the intellectual property, knowledge and things that are of significance to Indigenous people according to their laws and customs. Custodians themselves, as well as their views and their responsibilities, are not fixed and final in respect of any specific laws and customs, nor in respect of any specific time frame;

Education materials means copyright works that are created specifically for the purposes of teaching and education in any unit or course offered by the University. Education materials include but are not limited to books, notes, videos, CDs, manuals and guides, audio-visual recordings, computer-generated presentations, examination scripts and marking guides, course databases, online course materials, social media comments/blogs and websites;

Governance document means a formally approved document that outlines non-discretionary governing principles and intentions, in order to guide University practice. Governance documents are formal statements of intent that mandate principles or standards that apply to the University's governance or operations or to the practice and conduct of its staff members and students they include the Charles Darwin University Act (2003), by-laws, policies, procedures, guidelines, rules, codes and the Enterprise Agreement;

Indigenous peoples means Australian Aboriginal and Torres Strait Islander peoples;

Indigenous Intellectual Property (IP) and Knowledges means Indigenous Australians' 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 and set out in Article 31 of the [United Nations \(UN\) Declaration of the Rights of Indigenous Peoples](#). They 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. Indigenous creative works enduring through past and present and are integrated into all other aspects of society;

Intellectual property (IP) means the various rights which the law gives for the protection of creative effort of a person or group of people. Intellectual property was defined by the 1967 Convention Establishing the World Intellectual Property Organisation (WIPO) to include the rights relating to:

- Literary, artistic and scientific works;
- Performances of performing artists, phonograms and broadcasts;
- Inventions in all fields of human endeavour;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks, and commercial names and designations;
- Protection against unfair competition; and
- All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Intellectual property is customarily divided into copyright and rights related to copyright subject to the [Copyright Act 1968](#), and technical or industrial intellectual property that may be protected as registered intellectual property or by common law;

Licence means an agreement or contract whereby the owner of the intellectual property (the ‘Licensor’) permits another party (the ‘Licensee’) to use that intellectual property;

Moral rights means the right of attribution of authorship, a right that a work not be falsely attributed and a right of integrity of authorship as established in the [Copyright Act 1968](#);

Net commercialisation revenue means in respect of particular commercialised intellectual property, the commercialisation revenue less the commercialisation expenses for that intellectual property;

Pre-existing IP means intellectual property that the University formally agrees is owned by a staff member, visitor or student prior to the date of their employment, engagement or enrolment at the University;

Registrable IP means intellectual property that is potentially patentable or registrable and accordingly subject to protection under Australian and/or international law, which includes the Commonwealth [Circuit Layouts Act 1989](#), [Designs Act 2003](#), [Patents Act 1990](#), [Plant Breeders’ Rights Act 1994](#) and [Trade Marks Act 1995](#);

Scholarly or creative works means copyright works that are intended for academic publication including any article, book, manuscript, manual, musical composition, diagram, photograph, creative writing, film or like publication regardless of format (for example, printed, digital or electronic versions) created by staff members, students or visitors, but excludes education materials;

Student means a person prescribed as a student of the University in By-law 2 of the [Charles Darwin University \(Student of the University\) By-laws](#);

Staff member means anyone employed by the University and includes all continuing, fixed-term, casual, adjunct or honorary staff or those holding University offices or who are a member of a University committee;

University resources means facilities, equipment, services, funds, support staff effort and the paid time (including paid leave) of staff members; and

Visitor means any person who is a staff member who is not an employee, student or a person covered by a separate arrangement addressing Intellectual Property ownership; or any corporation given access to University resources for the purposes of undertaking research or development, whether or not in collaboration with the University. A person or corporation continues to be a visitor for the purposes of this Policy even if the period of appointment as a visitor has ceased.

POLICY

The University will recognise intellectual property rights in accordance with Commonwealth legislation and the World Intellectual Property Organisation (WIPO).

Indigenous Intellectual Property and Knowledges

The University respects and commits to the Indigenous Intellectual Property and Knowledges rights of Indigenous peoples expressed in Article 31 of the [United Nations Declaration of the Rights of Indigenous Peoples](#):

- There is much Indigenous diversity in Australia;
- Different Indigenous groups have different cultural norms and different ways of doing things;
- Custodians have different views and obligations; and
- Indigenous people have different approaches to redressing the historic injustices of colonisation and dispossession that are the concern of the United Nations Declaration.

Accordingly, the staff members, visitors and students of the University will:

- Ensure that any research and/or education that includes Indigenous peoples and their Intellectual Property and Knowledges is respectful and that the protocols, processes and procedures involved in accessing the Intellectual Property and Knowledges are respectful and followed faithfully;
- 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 from time to time;
- Ensure that all Indigenous Knowledges is treated according to the desires of the custodians including regular renegotiation of permissions with the custodians;
- 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;
- 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;
- Ensure that consistently with the principle of reciprocity the custodians of Indigenous Knowledges that is used by the University in research and/or teaching are compensated for their time and knowledge;
- 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 Knowledges properly evidenced permission is obtained from custodians and that any concerns custodians have about publication are respected and worked through by mutual agreement;
- Ensure that custodians are acknowledged in all publications and teaching materials if they desire to be acknowledged;
- 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;
- Comply with applicable legislation, national and international standards and protocols and prevailing guidelines of appropriate conduct concerning the use of indigenous cultural heritage, traditional knowledge and cultural expressions;; including the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) [Guidelines for Ethical Research in Australian Indigenous Studies](#);
- 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
- Commit to the inclusion and participation of appropriate Indigenous authorities in all substantive matters relating to Indigenous Intellectual Property and Knowledges.

Ownership

Ownership by the University of Intellectual Property developed by staff members

Unless otherwise agreed in writing by the Deputy Vice-Chancellor Research & Research Training as stipulated in this policy, the University asserts legal and beneficial ownership rights over all intellectual property:

- Created by academic, professional, technical or administrative staff members in the course of their employment by the University; and
- Created by visitors provided that University resources or University background intellectual property and or University funding have been used, or the intellectual property is a component of intellectual property generated by a team including staff members and/or students.

To ensure that all intellectual property ownership rights vest in the University, staff members must assign all intellectual property to the University.

Ownership by the University of Intellectual Property developed by students

The University does not assert ownership of intellectual property created by students unless the intellectual property:

- Has been separately assigned to the University under a specific agreement with the student; or
- Jointly created by the student and staff member/s in which case the student is regarded as a creator; or
- Is the subject of an intellectual property agreement between the University and a third party (usually reflecting a sponsored research project).

Ownership by the University of Intellectual Property developed by students who are staff members

Unless otherwise agreed in writing by the Deputy Vice-Chancellor Research & Research Training the University asserts legal and beneficial ownership of intellectual property created by students who are employed as staff members where the intellectual property is developed in the course of employment.

Ownership of Pre-existing Intellectual Property

Staff members, students and visitors must advise the University about the existence of pre-existing intellectual property brought to the University within thirty (30) days of their employment, engagement or enrolment. If no such advice is received then any intellectual property disclosed during the period of employment, engagement or enrolment is owned by the University.

Ownership of certain Scholarly or Creative Works

The University does not assert ownership of the intellectual property in scholarly or creative works except where the work is specifically commissioned.

The Deputy Vice-Chancellor Research & Research Training may at his or her discretion grant the creator/s of scholarly or creative work that has been commissioned a non-exclusive licence to use the scholarly or creative works. The creator/s of a scholarly or creative work that has been commissioned may request the assignment of ownership rights to the creator/s. If the assignment is granted by the Deputy Vice-Chancellor Research & Research Training, the University will retain a perpetual, non-exclusive licence to use the scholarly or creative work for education and research purposes.

Students

A student cannot be required by the University to assign their intellectual property as a condition of enrolment, continued enrolment, or to complete the requirements of a course in which they are enrolled.

A student may choose to participate in or to continue to participate in an activity that is the subject of an agreement between the University and a third party. In this event, the University may require the student to assign intellectual property and/or to warrant they will not breach that agreement.

The University must notify the student about the existence of a third party agreement in relation to activities that affect the student and must urge the student to seek independent advice (which may include legal advice) before entering any agreement with the University. Students will be given a period not less than thirty (30) days to review and return documentation.

The University expects that potential supervisors should advise a potential research student prior to enrolment about the existence and conditions of a third party agreement, so far as permitted by confidentiality. If an enrolled student decides not to participate in an activity subject to a third party agreement, the University will endeavour to find an alternative project and supervision options.

Unless otherwise determined by the Vice-Chancellor the University must not enter into third party agreements that restrict the rights of students to have their theses or other forms of assessment submitted for examination. No third party agreement term may assert external control over the content of the thesis or assessment and no term may delay submission of the thesis or assessment.

Where University or third party intellectual property is contained in material submitted to examiners, the University may require an examiner to keep that intellectual property confidential where necessary.

Copyright

Staff members, visitors and students regularly submit for publication scholarly or creative work and education material in which they or the University own copyright intellectual property.

In these circumstances, the University encourages the retention of copyright ownership where possible in support of a global movement to redress current imbalances in scholarly publishing. Nonetheless, a publisher may demand that a copyright owner assigns copyright to them. The University provides information and documents that can assist with the negotiation of the terms of such an assignment.

Creators of scholarly or creative work must not assign copyright to a publisher in a manner that prevents them from satisfying the requirements of this policy and the University's [Institutional Repository Policy](#) unless permitted to do so in writing by the Deputy Vice-Chancellor Research & Research Training.

Moral Rights

The University recognises the moral rights of creators. The University may be requested by a third party to arrange for certain consents in respect of moral rights in scholarly works and/or education materials that may be created during the course of a sponsored project. Wherever possible in third party relationships the University will consult with creators and endeavour to protect the moral rights of staff members, students and visitors, especially in relation to academic standing and proper attribution of academic work that is to be published openly.

Licencing

The creator/s of a scholarly or creative work that is not commissioned grants the University a perpetual, royalty-free, non-exclusive licence to use the work in the University's education and research. The licence persists should the creator cease to be a staff member or student of the University.

The University grants the creator/s of educational materials that are not commissioned a perpetual, royalty-free, non-exclusive licence to use the work in the University's education and research and in education and teaching in other institutions provided that such education and teaching is not in competition with the University.

Where open access copyright permissions exist, the University permits the creator/s of education materials that are not commissioned and encourages the creator/s of scholarly or creative works that are not commissioned to publish the materials and works under a [Creative Commons Licence](#) in a manner that is consistent with the [Institutional Repository Policy](#).

Commercial exploitation of intellectual property owned by the University

Where appropriate to do so the University will endeavour to commercialise University intellectual property and to realise its full value for the benefit of creators and the University.

Disclosure

All creators of intellectual property (including staff members and/or students engaged in work under a third party agreement) must promptly inform the University in writing if they form the view that the intellectual property may have significant commercial value or any other significant impact. The University will retain this information in the institutional Intellectual Property Register.

Where education materials and/or scholarly or creative works have been commissioned and the intention to commercialise the intellectual property has arisen, the intellectual property will be disclosed and the information will be retained in the institutional Intellectual Property Register.

Where there is more than one (1) creator, the creators/s must advise the University at the time of disclosure about the shares of the intellectual property that each has created in the form of a percentage that sums to 100%. If the disclosure relates to improvements, enhancements or modifications to previously disclosed intellectual property the University will record this advice as additional information about new shares and new or absent creators. If the creators are unable to reach agreement about shares, the Deputy Vice-Chancellor Research & Research Training will determine the shares from a prima facie position of equal contribution.

Exploitation

On receipt of written advice disclosing new intellectual property, the University will promptly establish the urgency of the need to protect the intellectual property by means of a patent or other registration, particularly taking account of the creator's wish to publish the intellectual property. Having determined the urgency, the Deputy Vice-Chancellor Research & Research Training may approve a prompt patent filing or other registration without this decision committing the University to commercialisation.

Within a period that normally will not exceed six (6) months the Deputy Vice-Chancellor Research & Research Training will determine whether or not the University will pursue commercialisation and the creators will be informed promptly of the decision.

If the University determines not to pursue commercialisation or to abandon a commercialisation activity, the University will normally offer the intellectual property under licence to the creator should the creator

wish to exploit the intellectual property. The University will negotiate the terms of a licence in good faith taking account of its decision not to accept the risk of commercialisation.

With the Vice-Chancellor's written approval, the University may participate in the formation of and hold shares in a start-up company to accelerate commercialisation and normally will facilitate a creator's intention to participate and hold shares.

Disbursement of Net Revenue

The University will pay the creators of intellectual property that has been commercialised once per year on an agreed date a share of the net commercialisation revenue received in the previous calendar year or part thereof from the commercialisation of that intellectual property.

The University will retain full record of the total accumulated payment made to creators. The rate of payment of the creators' share of the net commercialisation revenue will be the full amount up to a total payment (accumulated across years) of \$25,000, one-half once the total amount is more than \$25,000 and less than \$100,000 and one-third when the total amount exceeds \$100,000.

If the creators are shareholders in any start-up corporation established to exploit the intellectual property, they will not be paid in respect of revenue that the University receives in relation to its share of dividends or proceeds from the sale of the corporation.

Creators are advised to seek external professional advice prior to accepting any disbursements under this policy.

Vice-Chancellor as Attorney

If a creator fails to complete any action the University deems is required for commercialisation the Vice-Chancellor has the right to do all things necessary to complete that action even when the University is a beneficiary of that action. The Vice-Chancellor may not exercise this power if the University and the creator are in dispute.

Confidential information

Staff members, students and visitors must not use confidential information in any manner that places the University in breach of any term of a third party agreement, and/or which results in the loss of an opportunity to protect and/or commercialise University intellectual property.

IP Handbook

The University may publish from time to time an Intellectual Property Handbook containing additional advice about intellectual property and commercialisation, descriptions of workflows and operational templates. The Handbook must be consistent with this Policy. In the event that an issue of conflict, ambiguity or uncertainty arises between the Handbook and this Policy, it is this Policy that prevails.

Resolution of disputes

Any dispute between staff members, between students and/or between staff and students relating to the ownership of intellectual property will be addressed under the relevant University disputes policy.

If the University and one (1) or more creator/s are unable to resolve a dispute arising from commercialisation, the Vice-Chancellor will appoint an independent expert to resolve the matter.

Saving provisions

Intellectual property disclosed after the publication of this version of the policy will be covered by the policy provided that nothing in this version of the policy will prevent all contracts between the University and external parties remaining in full force and effect until such contracts expire. A contract between the University and a creator made before the publication of this version of the policy will be governed by the Intellectual Property Policy under which it was entered unless otherwise agreed in writing by both parties.

ESSENTIAL SUPPORTING INFORMATION

Internal

[Authorship of Research Output Procedures](#)

[Code of Conduct](#)

[Conflicts of Interests Policy](#)

[External Work Policy](#)

[Indigenous Peoples Policy](#)

[Institutional Repository Policy](#)

[Research Data Management](#)

[Responsible Conduct of Research Policy](#)

[Students – Grievances with Staff or Other Students Procedures](#)

External

[Australian Institute of Aboriginal and Torres Strait Islander Studies \(AIATSIS\) Guidelines for Ethical Research in Australian Indigenous Studies](#)

[Circuits Layouts Act 1989](#) (Commonwealth)

[Copyright Act 1968](#) (Commonwealth)

[Copyright Amendment \(Moral Rights\) Act 2000](#) (Commonwealth)

[Designs Act 2003](#) (Commonwealth)

[Patents Act 1990](#) (Commonwealth)

[Plant Breeders' Rights Act 1994](#) (Commonwealth)

[Trade Marks Act 1995](#) (Commonwealth)

[United Nations \(UN\) Declaration of the Rights of Indigenous Peoples](#)

Document History and Version Control

Last amendment:	15 Dec 2017	Next Review:	May 2020
Sponsor:	Deputy Vice-Chancellor Research and Research Training		
Contact Officer:	Deputy Vice-Chancellor Research and Research Training		

Version	Date Approved	Approved by	Brief Description
1.00	4 May 2005	Council	Creation of original document and upload to CDU website.
1.01	28 Dec 2010	Governance	<ul style="list-style-type: none"> • Convert document to new template • Add statement of authority, relevant definitions, document history and version control and essential documents in keeping with new policy format • Amend minor grammatical and spelling errors • Amend Audit and Risk Committee to Finance, Risk and Review • Committee to reflect change in committee title • Senior Staff changed to Senior Executive • 'Internal Audit Function' deleted as no longer in use • Amend Executive Director, Business Development
1.02	28 Jan 2011	Governance	<ul style="list-style-type: none"> • Minor changes to spelling, grammar and formatting • Amend contact officer and Executive Director, Corporate Services to Deputy Vice-Chancellor, Research and International to reflect position responsibility change
1.03	10 Jan 2012	Governance	<ul style="list-style-type: none"> • Removal of reference to Finance, Risk and Review Committee as no longer active • Amended position titles in accordance with new organisational chart • Update hyperlinks • Minor changes to grammar and formatting • Changed contact officer
1.04	6 Feb 2013	Governance	<ul style="list-style-type: none"> • Convert document to new template • Updated and added hyperlinks • Minor changes to wording, formatting and grammar • Assigned document number • Removal of general responsibilities section • Added relevant definitions
2.00	24 May 2017	Vice-Chancellor	Major review where the whole document has been re-written in its entirety.
2.01	15 Dec 2017	Governance	<ul style="list-style-type: none"> • Conversion to new Governance template due to new University branding • Update definitions for student and staff member • Amend Sponsor from VC to DVC, RRT

