



Intellectual Property Procedures

1. COMPLIANCE OBLIGATION SUPPORTED

[Intellectual Property Policy](#)

2. PROCEDURAL DETAILS

2.1 See [Intellectual Property Policy](#) for core statements on employees' and students' IP ownership.

2.2 Teaching materials

2.2.1 The University owns the IP in teaching materials except:

- (a) for any existing IP that an employee owns and incorporates into teaching materials, which continues to be owned by the employee; or
- (b) as otherwise agreed in writing between the University and an employee.

2.2.2 An employee may publish teaching materials in a manner approved by the University with the prior written permission of their line manager.

2.3 Commissioned works

The University owns the copyright in commissioned works unless otherwise agreed in writing between the University and the originator.

2.4 Licensing of IP to the University

2.4.1 Where the [Intellectual Property Policy](#) or [procedures](#) or a separate agreement confirm that an employee owns the IP developed, created, authored or otherwise contributed to during their course of duties or a University project then, unless otherwise agreed:

- (a) the employee grants to the University a non-exclusive, royalty-free, worldwide, perpetual and irrevocable licence to publish and use the IP for the University's educational and research purposes (including a right to sub-licence to any third party for research or education purposes) and to make it available via its institutional repository;
- (b) the University may access the IP to freely exercise the licence granted to it; and
- (c) the employee will notify the Director, IP Commercialisation immediately in writing if the employee assigns the ownership of the IP to any other party.

2.4.2 Where the IP referred to in this section is an artistic work, scholarly work or ICIP, the University will consult with the employee before exercising its rights under any licence granted under this section.

2.5 Student ownership

2.5.1 A student owns IP developed, created or authored by them during their period of admission at the University, except where the IP arises from participation in a University project in which case the University will own the IP unless otherwise agreed in writing with the student.

2.5.2 Where the University owns IP developed, created or authored by a student, then:

- (a) the student will be accorded the same rights and obligations as an employee for the purposes of the [Intellectual Property Policy](#) and these [procedures](#) including revenue sharing arrangements; and
- (b) the University will ensure that the student's academic progress is not hindered and, where relevant, the examination of the student's thesis is not impacted by the application of the [Intellectual Property Policy](#) or these [procedures](#).

2.6 Higher Degree by Research

2.6.1 HDR students retain copyright in any part of a thesis they solely author unless, otherwise agreed with the University in writing.

2.6.2 HDR students will comply with any confidentiality requirements imposed by the

University or a sponsor if the thesis is authored as part of a University project.

2.7 **Visitors**

Visitors are bound by these procedures as if they are an employee during the period of any visit or appointment by the University, unless otherwise agreed in writing.

2.8 **Existing IP**

2.8.1 The University does not exert ownership over existing IP. Unless otherwise agreed in writing, the University owns any IP developed, created or authored during a University project or by an employee in their course of duties or a student in their period of admission which uses or incorporates existing IP.

2.8.2 The University may require employees and students to verify ownership of existing IP by providing relevant documents.

2.8.3 IP Commercialisation will only commercialise existing IP where the owner has assigned or licensed the IP to the University.

2.9 **Notification of the creation of IP**

2.9.1 Where an originator develops, creates or authors IP that might reasonably be capable of commercialisation, they will promptly notify the Director, IP Commercialisation (or nominee) in the manner required by the IP Commercialisation unit.

2.9.2 When all information is received by IP Commercialisation to enable it to evaluate the IP, the Director, IP Commercialisation (or nominee) will respond in writing within 12 weeks of receiving the notification (or such longer period as communicated to the originator) advising whether or not the University will participate in any commercialisation.

2.9.3 During the period in which IP Commercialisation is considering the notification, the originator will provide the Director, IP Commercialisation (or nominee) with reasonable assistance including, but not limited to, making reasonable efforts to provide information promptly and to keep the existence of the IP confidential if requested.

2.10 **Commercialisation of IP**

2.10.1 Where IP Commercialisation advises an originator that it intends to participate in commercialisation of the IP, a commercialisation plan will be developed by IP Commercialisation in consultation with the originator.

2.10.2 Each originator will provide IP Commercialisation with reasonable assistance during the process of commercialisation, including, but not limited to:

- (a) making reasonable efforts to provide information promptly and allocate reasonable time to support the commercialisation process;
- (b) providing prompt updates on further developments in relation to the IP; and
- (c) when requested, promptly executing any documents necessary to give effect to the commercialisation.

2.10.3 An originator may not use University resources for independent commercialisation purposes without prior written consent of the University.

2.11 **Distribution of Net Revenue**

2.11.1 Where any Revenue is generated from the commercialisation of IP, the University will distribute any Net revenue received as follows unless otherwise agreed in writing with any originator or unless a spin-out company is established pursuant to section 2.12:

- (a) where there is a single originator of the IP, the originator will receive 50% of the Net revenue; and
- (b) where there is more than one originator, 50% of the Net revenue will be apportioned equally between each of the originators, unless the University is satisfied that the originators have agreed otherwise as to the relevant portion of the Net revenue.

2.12 **Spin-out Companies**

2.12.1 The University may decide to commercialise IP through the establishment of a spin-out

company, in accordance with its [Governance Requirements – Relevant Entities Procedures](#).

2.12.2 Where a spin-out company is established, section 2.11 (Distribution of Net revenue) will not apply and instead the contribution of any originator may be recognised through the issue of shares to the originator in the spin-out company in the number as is determined by the University.

2.13 Assignment of IP

2.13.1 Where IP Commercialisation has advised pursuant to section 2.9 that it will not pursue commercialisation, the originator may apply to IP Commercialisation for an assignment of that IP in the manner required by IP Commercialisation.

2.13.2 The University may impose any conditions on assignment of ownership of University IP, including without limitation:

- (a) the amount (if any) of a reasonable royalty or fee to the University, taking into consideration resources spent by the University on the development, protection and/or commercialisation of the University IP; and
- (b) the grant by the originator to the University of a non-exclusive, royalty-free, worldwide and perpetual licence to produce, publish or use the IP for its purposes until the originator enters into a separate agreement with a third party in relation to the IP.

2.14 Employee and student obligations

2.14.1 If requested by the University, employees and students will promptly execute all documents (including assignments of IP and deeds of acknowledgement of ownership of IP) necessary to give effect to the arrangements set out in the [Intellectual Property Policy](#) and these [procedures](#).

2.14.2 Where the University enters into an agreement with a third party and:

- (a) the agreement contains obligations concerning the ownership or authorised use of IP; and
- (b) employees or students are involved in activities or have obligations on behalf of the University under that agreement; and
- (c) as a result of those activities or obligations, IP is or may be developed, created or authored or disclosed,

the University will as far as practicable consult with relevant employees and students who will be affected by that agreement and then employees and students will enter into agreements to give effect to the obligations as the University requires.

2.14.3 An employee or student who does not own the IP in a work will not:

- (a) claim to be an originator of that IP;
- (b) apply for any form of protection for that IP;
- (c) commercialise or otherwise deal with that IP; or
- (d) do any thing or act in a manner inconsistent with the [Intellectual Property Policy](#) or [procedures](#).

2.14.4 Any employee or student who becomes aware of the unauthorised use of University IP will inform the Deputy Vice-Chancellor, Research promptly in writing.

3. RESPONSIBILITIES

Responsibilities are as set out in section 2.

4. SCOPE OF PROCEDURES

These Procedures apply to all members of the University community (which includes Council members, students, employees, University associates, Curtin controlled entities, and all persons participating in University business or activities, including whether as a visitor, adjunct appointee,

service provider, or contractor).

5. DEFINITIONS

(Note: Commonly defined terms are located in the [Curtin Common Definitions](#). Any defined terms below are specific to this document)

Artistic Work

A painting, sculpture, drawing, engraving, photograph or any other work of artistic craftsmanship created or made for the sole purpose of aesthetic or artistic merit.

Commercialisation or Commercialise

In relation to IP means to make, sell, copy, adapt, apply, publish, develop, use, assign, license or otherwise use the IP for the purpose of generating financial or other commercial gains. This definition excludes tuition fees and student contribution amounts paid by students.

Course of Duties

The scope of duties as set out in the terms and conditions of any relevant enterprise bargaining agreement, contract of employment, duty statement or any other agreement between the individual and the University in effect at the time at which the IP was generated.

Existing IP

IP which was developed, created or authored:

- (a) by a student before a student's period of admission at the University or outside of their enrolment at the University;
- (b) by an employee before the employee commenced employment with the University or outside their course of duties and without using University resources; or
- (c) by a visitor separately to their engagement with the University and not pursuant to a University project.

Indigenous Cultural and Intellectual Property or ICIP

The interests of Aboriginal or Torres Strait Islander people in their culture, heritage and knowledge and includes the intangible and tangible aspects of their cultural practices, cultural expressions, resources and knowledge systems that have been and continue to be developed, nurtured and refined as part of expressing their cultural identity and includes any applicable cultural rights in favour of Australian Indigenous people that may be given effect under Australian law.

Intellectual Property (IP)

All statutory and other proprietary rights anywhere in the world, whether registered or unregistered, in relation to:

- (a) a patent, application for a patent, invention, manner, method or process of manufacture, or method or principle of construction as defined in the [Patents Act 1990 \(Cth\)](#);
- (b) a copyright work as defined in the [Copyright Act 1968 \(Cth\)](#);
- (c) a design as defined in the [Designs Act 1906 \(Cth\)](#);
- (d) a plant variety as defined in the [Plant Breeders' Rights Act 1994 \(Cth\)](#);
- (e) a circuit layout or semi-conductor chip layout or design or eligible layout as defined in the [Circuit Layouts Act 1989 \(Cth\)](#);
- (f) a trade mark as defined in the [Trade Marks Act 1995 \(Cth\)](#);

and all other rights as defined by Article 2 of the [Convention Establishing the World Intellectual Property Organisation](#). It includes related rights and confidential information and know-how in relation to the above rights, or as otherwise determined by the University.

Net Revenue

In relation to a particular item or related items of IP, the revenue remaining after the deduction by the University of its reasonable costs incurred in the protection and commercialisation of University IP, including but not limited to an appropriate allowance for risk, in that particular item or related items of IP.

Originator

Any person who authors, creates, develops or makes IP, whether or not in conjunction with another person.

Revenue

The gross proceeds received by the University as a result of commercialisation of University IP. This will include but not be limited to any amount in the form of upfront fees, milestone payments, royalties, dividends and the proceeds from sale of shares in cases where shares have not been issued directly to originator(s) in consideration for their contribution. It specifically excludes:

- (a) research and development funds;
- (b) grants and direct investments;
- (c) donations from the University, sponsors or other third-parties; and
- (d) gross proceeds received by the University as a result of commercialisation of teaching materials and work commissioned by the University.

Scholarly Work

Any article, book, manual, manuscript, or other material developed, created or authored by an employee in their course of their duties, for education or scholarly purposes, but does not include teaching materials.

Sponsor

A third party, external agency or industry partner which has entered into an agreement with the University to undertake research or other services.

Teaching materials

Materials whether in electronic, written or any other form produced by University employees or students or commissioned by the University for use in, or in conjunction with a course, subject or unit offered or to be offered by or on behalf of the University or by an affiliated open learning or distance education agency. It includes without limitation lecture notes and material, syllabi, handouts, study guides, course software and assessment materials regardless of format (for example, printed, digital, electronic, multi-media presentations and web content). It excludes personal lecture notes by employees that are not made available to students or personal notes taken by students to assist in study. If any work may be considered both teaching materials and scholarly or artistic works, for the purpose of this policy it will be treated as teaching materials.

University Associate

Any visiting academic, adjunct appointed to the University, any honorary or emeritus appointee or any person who is a member of another educational or research institution, and is engaged in teaching, research or other activities of the University.

University IP

IP owned by the University according to the terms of the [Intellectual Property Policy or Procedures](#) or otherwise as a matter of law.

University Project

Work or research administered by or on behalf of the University which:

- (a) is funded wholly or in part by a sponsor; or
- (b) is commissioned or otherwise funded by the University; or
- (c) uses or incorporates University IP or University resources or both; or
- (d) is a collaborative project, which is either:
 - (i) a program of work conducted by more than one originator, where each originator's contribution to the IP cannot be separated from the contribution made by other originators; or

- (ii) a program of work that originates from, or is an improvement to, University IP.

University Resources

Resources belonging to the University including without limitation, premises; infrastructure; facilities; funds; services; equipment; paid leave; and employee or University Associate's time.

6. SCHEDULES

Nil.

7. RELATED DOCUMENTS/LINKS/FORMS

Internal

[Authorship, Peer Review and Publication of Research Outputs Policy](#)

[Disclosure of Relationships and Interest Procedures](#)

[Governance Requirements - Relevant Entities Procedures](#)

[Research Management Policy](#)

[Research Data and Primary Materials Policy](#)

External

[Australian Institute of Aboriginal and Torres Strait Islander Studies Code of Ethics for Aboriginal and Torres Strait Islander Research](#)

[Circuit Layouts Act 1989 \(Cth\)](#)

[Convention Establishing the World Intellectual Property Organisation](#)

[Copyright Act 1968 \(Cth\)](#)

[Designs Act 2003 \(Cth\)](#)

[National Principles of IP Management for Publicly Funded Research](#)

[Patents Act 1990 \(Cth\)](#)

[Plant Breeder's Rights Act 1994 \(Cth\)](#)

[Trade Marks Act 1995 \(Cth\)](#)

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REVISION HISTORY

Version	Approved/ Amended/ Rescinded	Date	Committee / Board / Executive Manager	Approval / Resolution Number	Key Changes and Notes
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