Intellectual Property Policy

Section 1 - Preamble

(1) This Policy is made under Section 6(3)(a) and (b) of Charles Darwin University Act 2003 whcih empowers Charles Darwin University (CDU)to:

a. enter into contracts;
b. create, develop, apply for, obtain and hold intellectual and industrial property and rights; and
c. enter into agreements or arrangements for their commercial exploitation on terms as to royalties, lump sum payments or otherwise that the University Council thinks fit.

Section 2 - Purpose

(2) This Policy governs the creation, development, ownership, sharing and commercialisation of Intellectual Property (IP), including any pre-existing IP, created at CDU, whether relating to education, teaching, research or administration.

(3) This Policy provides a framework for the University to:

a. identify, protect, manage and commercialise its IP;
b. prescribe the entitlements of staff, students and visitors of the University with regards to IP;
c. support innovation in education, teaching and research within the University;
d. promote the advancement and transmission of knowledge created by or developed at the University;
e. allocate the net proceeds of commercialisation of IP; and
f. deal with disputes regarding IP.

Section 3 - Scope

(4) This Policy applies to staff, students and visitors at CDU.

(5) This Policy applies to any IP created on or after the date on which this Policy was approved.

(6) This policy applies to any pre-existing IP brought to the university on or after the date on which this Policy was approved.

Section 4 - Policy

Principles

(7) The protection and commercialisation of IP is undertaken consistent with the following principles:

a. enable engagement with external partners and ensure that the University's core endeavours of teaching and research are utilised for the greatest local, national and global benefits;

b. facilitate a culture of creativity and innovation at the University;
c. support and reward the University's staff, students and visitors in their creative, entrepreneurial and commercial endeavours, where possible;
d. ensure that individuals at or engaged by CDU receive a benefit from commercialisation of IP created by them as recognition of their intellectual input, where possible;
e. ensure the moral rights of the creators of IPs are recognised in accordance with the Copyright Act 1968 (Cth);
f. ensure that the University complies with other relevant legislation, national and international standards and protocols, including but not limited to the Australian Code for the Responsible Conduct of Research, 2018, the National Principles of Intellectual Property Management for Publicly Funded Research, the ARC Intellectual Property Policy, and the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research; and
g. manage risks to the University associated with both the creation and development of IP, and the commercialisation of IP.

First Nations Knowledges and IP

(8) The University respects and acknowledges the significance of First Nations Knowledges and First Nations Knowledge Systems, First Nations cultural systems and First Nations IP.

(9) The University does not assert ownership of IP relating to First Nations works by staff, students and visitors, being a copyright work created predominantly by people of Aboriginal or Torres Strait Islander descent.

(10) The University will comply with legislation, national and international standards and protocols and prevailing guidelines of appropriate conduct concerning the use of First Nations cultural heritage and property, traditional knowledge and cultural expressions, including the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research.

(11) If First Nations Knowledge is to be used in any proposed commercialisation activities, the relevant administrative unit within the University must be consulted prior to the commencement of those activities to ensure appropriate recognition and protection are given to owners and their First Nations Knowledges.

(12) The University will also ensure that:

a. any academic activities that include First Nations Peoples and their Knowledges and IP are respectful to and underpinned by the core ethical values of integrity and acting in the right spirit, which are at the centre of the four principles of the AIATSIS research ethics framework;
b. the protocols, processes and procedures involved in accessing First Nations Knowledges and IP are acknowledged and followed faithfully;
c. any use of First Nations Knowledges and IP is agreed to by the person or people whose knowledge is being shared or used;
d. the informed consent by the person or people whose Knowledge or IP is being shared or used has been freely given, is properly recorded and is renegotiated regularly and in a timely manner;
e. there is equitable sharing of any benefits relating to the commercial use of First Nations Knowledge and IP on pre-agreed terms;
f. the source(s) of the Traditional Knowledge from which IP is created is(are) appropriately acknowledged;
g. the University responds promptly to representations by First Nations People regarding any need to review or revise this Policy in relation to First Nations Knowledges and IP.

Ownership by the University of IP created by staff members

(13) Unless otherwise stated in this Policy, or unless as otherwise provided in a separate agreement or agreed to in

writing by the University, the University asserts all legal and beneficial ownership rights over IP created by staff members:

a. in the course of their employment by the University;
b. by using the University's resources;
c. as part of a project that is supported by funding obtained through the University or of the University; and
d. in the absence of any specific agreement to the contrary, the University owns all IP in curriculum delivered by the University, and in curriculum of the University delivered by its third-party providers.

Ownership by the University of IP created by students

(14) Unless otherwise stated in this Policy, students own the IP created or originated by them.

(15) The University asserts legal and beneficial ownership of IP created by students who are employed as staff members where the IP is created in the course of their employment unless otherwise agreed in writing by the University or its relevant administrative unit.

(16) The University asserts ownership of IP created by students where the IP:

a. has been separately assigned to the University under a specific agreement with the student;
b. has been jointly created by the student and staff members, in which case the student is regarded as a creator; or
c. is the subject of an IP agreement between the University and a third-party (usually reflecting a sponsored research project).

(17) Students may be required by the University or a third-party to license or assign the IP in their student work to another party in circumstances where:

a. the work was created jointly or was created subject to enforceable contractual obligations to which the student has agreed;
b. it is a condition of a placement with an external host or agency undertaken as part of or ancillary to the course in which the student is enrolled, and that host or agency requires the licence or assignment;
c. the student is participating in a collaborative team project where their work forms part of a planned research program and the IP rights developed from the project form part of the project's outcomes;
d. there is collaboration with one or more other researchers (other than an appointed research supervisor) within or without the University;
e. the student's research requires either the use of pre-existing University IP or the use of results or inventions for which the University intends to file a patent application or wishes to otherwise commercialise;
f. the student receives funding for a research project or stipend from industry or other sources, but is not a Commonwealth or CDU allocated competitive scholarship;
g. the student receives funding under research or other contractual agreements which require the University (or other party) to own the relevant IP rights; and
h. the student is a co-originator of exploitable IP with a staff member of the University or under a project with a third-party sponsor.

(18) The University must notify the student about the existence of a third-party agreement in relation to activities that affect the student.

(19) The University will ensure that potential supervisors advise a potential research student prior to enrolment about the existence and conditions of a third-party agreement, so far as permitted by confidentiality.

(20) 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, if necessary, alternative supervisors.

(21) The University will urge the student to seek independent advice before entering into any agreement with the University.

(22) The University will publish on the University website the contact details of staff from whom students may seek advice about the operation of this Policy.

(23) The University is unable to provide students with legal advice regarding their individual IP rights, creations, ownership, or rights of use. Students should seek independent legal advice before signing any agreement relating to their individual IP rights, creation(s), ownership, or rights of use.

(24) Unless otherwise determined by the University, students will be given a period of at least 30 days to review and return documentation relating to an agreement.

(25) Students who assign IP rights in their student work to the University are entitled to share in any net commercialisation revenue paid to the University arising from commercialisation of those IP rights as if they are designated as ‘staff’ in this Policy.

(26) 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 may assert external control over the content of a student’s thesis and any associated works.

(27) No aspect of an agreement may provide for a delay in submission of the thesis and any associated works or in assessment of the thesis and any associated works.

(28) Where University or third-party IP is contained in material submitted to examiners, the University may require an examiner to ensure that IP remains confidential until advised otherwise.

Ownership by the University of IP created by visitors

(29) While having due regard to a visitor’s obligations to a third party, the University will negotiate with any visitor, on a case-by-case basis, to commercialise and share on reasonable terms the benefits of any IP developed by the visitor during their participation in any scholarly activity, including research, at the University.

(30) In certain circumstances, visitors may be asked to assign their IP rights to the University.

Ownership of Pre-existing IP

(31) The University does not assert ownership over pre-existing IP subject to clauses 4.28 - 4.30.

(32) Staff, students and visitors must disclose to and register with the University all pre-existing IP brought to the University within 30 days of their employment, enrolment or association respectively. As part of this process, the University must be provided with all documents relating to ownership of the IP, including any contract, agreement and licensing agreement, and third-party IP rights.

(33) Current staff, students and visitors must make a similar and immediate disclosure if they become aware that anything that they have created or developed prior to their employment, enrolment or association at the University is based on pre-existing IP, including relevant third-party rights.

(34) Unless otherwise determined by the University, if no advice is received about pre-existing IP as required by this Policy, then any IP disclosed by staff, students and visitors during their respective period of employment, enrolment or association is asserted to be owned by the University.

Ownership of IP and Copyright in Scholarly or Creative Works

(35) The University does not assert ownership of IP or Copyright in Scholarly or Creative works, unless one or more of the following occurs:

a. the University is the publisher of the work;
b. the creator of the IP has been commissioned by the University to create such work;
c. the relevant work is subject to an overriding contractual obligation between the University and a third party; or
d. the University agrees to assist in the publication or other development of the work, in which case the University will negotiate an appropriate distribution of all income from that process, including recovery of the University's costs.

(36) Where the University does not assert ownership in scholarly or creative works, it is entitled to a free, irrevocable, ongoing, non-exclusive right to use the relevant work for its purposes.

Copyright

(37) Staff members, students and visitors regularly submit for publication scholarly or creative work and educational materials in which they or the University own copyright IP.

(38) 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.

(39) Creators of a scholarly or creative work must not assign copyright to a publisher in a manner that prevents them from satisfying the requirements of this Policy, the University's Open Access Policy, Copyright Policy, Copyright Procedure and the requirements of relevant third parties, such as the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC), where appropriate.

Moral Rights

(40) The University recognises the moral rights of creators as specified in the Copyright Procedure.

(41) 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.

Licensing

(42) The creators of IP created as part of their studies or employment at the University grant to the University a world-wide, non-exclusive, perpetual, royalty-free licence to use, reproduce, modify and exploit that IP (and sub-license other people to do those things) for the business or internal requirements of the University's education, teaching and research endeavours. This licence is subject to any overriding contractual obligations the creator owes to third parties such as publishers of scholarly books and journals.

(43) The licence granted to the University includes the right to:

a. make the creator's IP available to the public in any form or through any media and in accordance with relevant rules, laws, and principles; and
b. reproduce and retain the creator's IP for University administrative purposes, such as assessment by the University and regulatory compliance with University policies and procedures, such as the University's Higher

Education Assessment Procedure or other relevant rules and procedures.

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

(45) The University encourages the creators of education and teaching materials that are not commissioned to publish the materials and works under a Creative Commons Licence in a manner that is consistent with the University's Open Access Policy.

Commercial exploitation of IP owned by the University

(46) Where appropriate to do so the University will endeavour to commercialise University IP and to realise its full value for the benefit of creators and the University, and for the benefit of local, national and global communities.

Disclosure

(47) All creators of IP must promptly inform the University in writing if they form the view that the IP may have significant commercial value or any other significant impact. The University will retain this information in the University's IP Register.

(48) Where education and teaching materials and/or scholarly or creative works have been commissioned and the intention to commercialise the IP has arisen, the IP will be disclosed, and the information will be retained in the University's IP Register.

(49) Where there is more than one creator, the creators must advise the University at the time of disclosure about the shares of the IP 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 IP, the University will record this advice as additional information about new shares and new or absent creators.

(50) If creators of IP are unable to reach agreement about shares, the University will determine the shares from a prima facie position of equal contribution.

Exploitation

(51) On receipt of written advice disclosing new IP, the University will promptly establish the urgency of the need to protect the IP by means of a patent or other registration, particularly taking account of the creator's wish to publish the IP. Having determined the urgency, the relevant administrative unit of the University may approve a prompt patent filing or other registration without this decision committing the University to commercialisation.

(52) Within a period that normally will not exceed six months, the relevant administrative unit will determine whether the University will pursue commercialisation and the creators will be informed promptly of the decision.

(53) If the University determines not to pursue commercialisation or to abandon a commercialisation activity, the University will normally offer the IP under licence to the creator should the creator wish to exploit the IP. The University will negotiate the terms of a licence in good faith taking account of its decision not to accept the risk of commercialisation.

(54) 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

(55) The University will reward University staff, students and visitors who have created IP by sharing the benefits arising from that IP, where possible.

(56) The University will pay the creators of IP 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 IP.

(57) 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.

(58) If the creators are shareholders in any start-up corporation established to exploit the IP, 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.

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

(60) The reward process and disbursement of proceeds will be reviewed annually to ensure the congruence of the overall aims of the University in its commercialisation activities and the rewards for and needs of creators of IP.

Vice-Chancellor as Attorney

(61) 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

(62) Staff members, students and visitors must not use confidential information in any manner that places the University in breach of any agreement or legal requirements including a third party agreement, and/or which results in the loss of an opportunity to protect and/or commercialise IP.

Conflict of Interest

(63) A conflict of interest is likely to arise in situations occurring with the commercialisation of creations or inventions relating to teaching and research.

(64) Staff members, students and visitors are required to consult the University's Conflicts of Interest Policy and the Conflicts of Interest Procedures.

Reassigning and Reverting IP

(65) If a decision is made by the University not to commercialise exploitable IP or to cease to continue to commercialise it, the University may offer to assign to the originators the Exploitable IP on reasonable terms and conditions.

(66) Any reassignment of commercial exploitable IP by the University will be subject to a perpetual worldwide, non-exclusive, royalty free licence for the University to reproduce, publish, perform, communicate, disseminate, modify and adapt the work for the University's teaching, research and promotional purposes, and, where this is consistent with University policies and procedures, to provide open access to the work.

Resolution of disputes

(67) If the University and one or more creator/s are unable to resolve a dispute arising from the application of this Policy, the Vice-Chancellor will appoint an independent expert to investigate the matter and provide a report, incorporating recommendations, to the Vice Chancellor.

(68) The Vice Chancellor's decision regarding a dispute will be final.

(69) A staff member, student or other person having a dispute with the University arising from this Policy, other than one covered by clause 4.63 should consult the University's Student Conduct & Complaints Management Unit for guidance.

Section 5 - Non-Compliance

(70) Non-compliance with Governance Documents is considered a breach of the Code of Conduct – Staff or the Code of Conduct – Students, as applicable, and is treated seriously by the University. Reports of concerns about non-compliance will be managed in accordance with the applicable disciplinary procedures outlined in the Charles Darwin University and Union Enterprise Agreement 2025 and the Code of Conduct – Students.

(71) Complaints may be raised in accordance with the Code of Conduct – Staff and Code of Conduct - Students.

(72) All staff members have an individual responsibility to raise any suspicion, allegation or report of fraud or corruption in accordance with the Fraud and Corruption Control Policy and Whistleblower Reporting (Improper Conduct) Procedure.

Status and Details

Status	Current
Effective Date	15th January 2022
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Responsible Executive	Steve Rogers Deputy Vice-Chancellor Research and Community Connection +61 8 89466890
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