Intellectual Property Policy

Section 1 - Introduction

(1) The University of Newcastle (University) is committed to fostering a culture and environment which advances excellence in research and teaching, promotes entrepreneurship, innovation and engagement with our community, and supports the dissemination and translation of knowledge for social and economic impact in and for our region and beyond. Intellectual property (IP) in all forms created as a result of these activities is a significant and valuable asset which must be responsibly managed to support the strategic priorities of the University, acknowledge the rights of and appropriately reward creators and inventors, and optimise benefits for the University and our communities.

(2) The ownership of intellectual property created by staff members and students of the University is determined by the terms of this Policy, which should be read in conjunction with the Intellectual Property Procedure.

Section 2 - Policy Intent

(3) This policy provides clear guidance on the University's position in relation to the ownership and management of intellectual property including its creation, use, sharing, protection and translation/commercialisation. This policy aligns with the National Principles of Intellectual Property Management for Publicly Funded Research identified by the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC).

(4) This policy is intended to promote, incentivise, and reward the dissemination and translation of knowledge, and to give certainty about intellectual property rights in the University with the goal of generating social and economic impact and increasing the availability of knowledge for the public benefit.

Section 3 - Scope

(5) This policy applies to:

a. all staff members and students of the University (or any group of them), and controlled entities who may create, whether or not in conjunction with another person, any IP (“the originator”) in all of its forms, which is IP owned by the University according to the terms of this policy or otherwise as a matter of law; and
b. all forms of IP, including but not limited to patents, copyright, designs and trademarks.

Section 4 - Definitions

(6) In the context of this document, the following definitions apply:

a. “artistic works” means original copyright material that is artistic in character and includes paintings, sculptures, manuscripts, prose works (fiction and non-fiction), poetry, music, films, photographs, sound recordings, broadcasts and dramatic works;
b. “course of their duties” means for a staff member:
    i. the scope of the duties for a staff member as set out in the terms and conditions of any relevant

Workplace Agreement, contract of employment, policy document, position description, duty statement or other agreement between the staff member and the University in effect at the time at which the University IP or other intellectual property was generated;

ii. activities using University resources, including University IP, laboratories, facilities that the University owns or has right of access to, University funds, services, equipment, computer laboratories, media equipment, consumables, chemicals, staff time, and other University provided services; or

iii. activities undertaken within the scope of a University project;

c. “course materials” means:

i. any copyright work whether in electronic, written or any other form of media created by a staff member specifically for use in, or in connection with a course, subject, or unit offered or to be offered by the University or by an affiliated provider;

ii. any materials commissioned by the University specifically for use in or in connection with a course, subject, or unit offered or to be offered by the University or by an affiliated provider unless there is an agreement to the contrary;

d. “computer works” include without limitation:

i. computer software in any form and on any medium;

ii. multi-media works in any form which are accessible wholly or partly by means of a computer;

iii. webpages and websites; and

iv. copyright works created with the intention of accessing them primarily by computer; but

v. does not include works in the public domain.

e. “determination period” means the period of time, as determined by the Intellectual Property Procedure, that commences after intellectual property has been added to the University Intellectual Property Register during which the University will evaluate the potential of the intellectual property for commercialisation;

f. “Indigenous Cultural and Intellectual Property” or “ICIP” means the rights that Indigenous peoples have in relation to all aspects of their heritage, knowledge and cultural expression as defined in the University of Newcastle Indigenous Cultural and Intellectual Property Protocol;

g. “Net Returns” means the financial return from commercialisation after the deduction of all direct University costs incurred during the creation, development and protection of the University IP which typically represents the cost of patenting and/or other protection, any payments to collaborating organisations under relevant agreements, and any external advice obtained with regard to commercialisation of the University IP;

h. “Open Educational Resources” or “OER” as detailed by UNESCO are “learning, teaching and research materials in any format and medium” that have been released under an open licence or public domain dedication. OER permit no-cost access, re-use, re-purposing, adaptation, and redistribution by educators and users. The scope of OER can be small (such as a checklist or infograph), medium (a video or book), or large (an entire course);

i. “originator” or “originators” means University staff or student(s) who:

i. in the case of a patentable invention: is an inventor;

ii. in the case of a copyright work or similar: is an author;

iii. in the case of a word, colour, smell, slogan, image or similar to be used as a trademark: is a person who conceived, developed or first used the word, colour, smell, slogan, image or similar as a trademark;

iv. in the case of designs: is a designer;

v. in the case of plant breeders rights: is a breeder;

vi. in the case of circuit layouts: is a designer; and

vii. in the case of trade secrets and know-how: is an originator of that body of knowledge;

j. “University purposes” means the purposes of the University from time to time as expressed in the University of Newcastle Act 1989 (NSW) and the University's Strategic Plan and supporting plans;

k. “scholarly works” means the copyright in any material intended for academic publication produced by a staff

member or student based on their scholarship, learning, or research (which may include academic publications, journal articles, presentations, papers, books, or non-traditional research outputs or artistic works intended for academic publication, but does not include course materials or computer works);

l. “University IP” means intellectual property that is owned by the University as determined by this policy and its associated procedure;

m. “University project” means a self-contained program of work or research administered by or on behalf of the University which is funded by:
    i. an external source; or
    ii. a specific direct allocation of infrastructure support or other University resources beyond that which is ordinarily provided to a School or other University organisational unit, Research Institute or University Research Centre; and

n. “commercialisation” or “commercialise” in relation to intellectual property means to make, sell, copy, adapt, apply, publish, develop, use, assign, license or otherwise utilise the intellectual property for the purpose of generating financial or other commercial gains or for public good through social enterprise and/or not for profit activities. For the purposes of this policy this definition excludes fees paid by students enrolled in a program leading to a University of Newcastle award.

Section 5 - Ownership of Intellectual Property Created by Staff

(7) The University owns all IP created by staff members within the course of their duties except for:

a. artistic works;
b. scholarly works;
c. IP where ownership is provided for in an agreement entered into between the University and the staff member.

(8) Staff members grant to the University a free, perpetual, irrevocable, non-exclusive licence to use (including the right to sub-license) their artistic works and scholarly works for University purposes. This licence is subject to any overriding contractual obligations owed to third parties of which the University has been made aware.

(9) Staff members will make all reasonable efforts to ensure that the licence granted above can be provided to the University when reaching agreements with third parties and notify the University as soon as practicable after entering into contractual obligations that would otherwise restrict such a licence.

Artistic Works

(10) The copyright in an artistic work created by a staff member in the course of their duties is owned by the originator(s) of the work and the University makes no claim to ownership of the copyright in such works, except to the extent that such artistic works were specifically commissioned by the University.

(11) Where there is doubt about whether a work is to be regarded as an artistic work, the relevant delegate, after obtaining advice from suitably-qualified advisers, will determine the matter.

Scholarly Works

(12) The copyright in a scholarly work created by a staff member in the course of their duties is owned by the originator(s) and the University makes no claim to ownership of the copyright in such works, except to the extent that such scholarly works were specifically commissioned by the University.

(13) Where there is doubt about whether a work is to be regarded as a scholarly work, the relevant delegate after obtaining advice from suitably-qualified advisers, will determine the matter.

Course Materials

(14) The University owns the copyright in course materials created by staff members except that:

a. the University's ownership of such course materials is subject to any pre-existing rights in copyright works which are incorporated in the course materials. Where there are such pre-existing rights, the University will obtain and/or use a licence to use any such works;
b. course materials, other than course materials referred to in subsection (c) below, may only be published by a staff member, including by electronic means, with the prior written authorisation of the relevant delegate; and
c. course materials may be published by a staff member without the need to obtain authorisation where the publication:
    i. is via the Learning Management System; or
    ii. is solely for use in the teaching of a University course or program or a University-approved course or program, either directly by a staff member or by another institution under a written contract with the University.

(15) Where course materials (or content derived therefrom) will benefit the community or the institution, the University may grant permission for these materials to be created as or converted to Open Educational Resources (OERs). Creation as or conversion to OER and the associated application of open licensing may not be appropriate where course materials are to be commercialised, contain confidential information, or where publication of such material would infringe on the rights of others or legal commitments by the University.

(16) Where creation as or conversion to OER is approved:

a. the University supports the application of Creative Commons licensing;
b. the use of all materials included is appropriately licensed and attributed and will not infringe on the copyright of third parties; and
c. the moral rights of the creator/s must be appropriately acknowledged when releasing the materials under an open licence.

Computer Works

(17) The University owns the copyright in computer works developed by a staff member within the course of their duties other than those in the public domain.

Section 6 - Open Access

(18) Research outputs, including scholarly works, non-traditional research outputs, and research reports, should be made open access wherever possible in accordance with the Open Access Policy.

(19) Where there is doubt about whether a work is to be regarded as a research output, the relevant delegate, after obtaining advice from suitably qualified advisers, will determine the matter.

(20) The University may grant permission for Researchers to follow open data practices or otherwise make research data available in accordance with the Research Data and Primary Materials Management Procedure and the Open Access Policy. Open data practices may not be appropriate where data is to be commercialised, contains confidential information, or where the availability of data would infringe on the rights of others or legal commitments by the

University.

Section 7 - Ownership of Intellectual Property Created by Students

(21) Students own the intellectual property created in their capacity as a student during the course of their enrolment at the University, except as otherwise provided in this policy or specified in a separate agreement between the student and the University.

(22) The University will own intellectual property created by students when they participate in an activity that:

a. builds upon pre-existing University IP;
b. is carried out for or in conjunction with third parties who have entered into an agreement with the University, including but not limited to a Work Integrated Learning/Career Ready Placement project;
c. is intended to be commercialised by or on behalf of the University;
d. is undertaken with a specific contribution by the University. A specific contribution means funding, resources, facilities or apparatus contributed by the University (beyond that which is ordinarily contributed) but excludes a scholarship awarded by the University; or
e. is intended to support University commercial activities.

(23) To give effect to clause 22, the University will request as a condition of a student's participation in a relevant activity, or enrolment in a course of study, that the student enter into an agreement with the University to assign their intellectual property rights to the University and/or agree to other restrictions prior to commencement of the student's participation or enrolment.

(24) Where a student creates intellectual property in their capacity as a staff member, section 5 of this policy will apply to intellectual property created by the student, in place of this section 7.

(25) Notwithstanding clause 24, the copyright in a student's thesis is owned by the student unless the student agrees otherwise in writing except that, subject to any confidentiality requirements, the University reserves the right to make a copy of any student's thesis available via the University Library or University digital thesis database.

(26) In the event that the student assigns intellectual property rights to the University, the student will receive benefits as an Originator under this policy and the Intellectual Property Procedure in relation to that assignment.

(27) Ownership of student submissions to courses, such as assessable materials, remains with students. Where such submissions are desired to be used as samples for future offerings of courses, the student who submitted the material must provide freely given written consent to the de-identification and use of the material. Where students wish to retain their attribution on the material, they must also submit a signed agreement for the disclosure of their personal information to allow for such inclusion.

Section 8 - Ownership of Intellectual Property by Visitors and Conjoint Appointments to the University

(28) The University makes no claim to ownership of intellectual property created by a visitor or conjoint appointee to the University except where the visitor or conjoint appointee is involved in a University project or uses University IP. An agreement between the visitor or conjoint and the University is required before commencing the University project or the use of the University IP.

(29) Guest lecturer materials may not be re-used or published without the written agreement of the guest lecturer. The agreed period of use for the material should be negotiated as part of such consent.

Section 9 - Bringing Intellectual Property to the University

(30) The University requires a staff member or student who brings intellectual property to the University to provide documentation in relation to the intellectual property to Knowledge Exchange & Enterprise, within six months of commencement at the University. This should include confirmation of ownership and that the relevant intellectual property was created prior to commencing at the University in accordance with the Intellectual Property Procedure.

Section 10 - Dealing with a Copyright Work when a Staff Member Ceases University Employment

(31) The University requires a staff member who is leaving the University and who has in the course of their duties created a copyright work owned by the University, to do all things necessary to ensure that the University's IP in the copyright work is retained and protected. Where a staff member has ceased employment with the University and requires access to, or reuse of course materials or other copyright work owned by the University, they should consult with the University's Senior Librarian, Copyright and Scholarly Publishing and obtain the necessary approvals in accordance with the University's delegations of authority.

Section 11 - Moral Rights

(32) The Copyright Act 1968 (Cth) protects the moral rights of creators of works by acknowledging a right of attribution of authorship, a right not to have authorship falsely attributed, and a right of integrity of authorship of the work. The University recognises the moral rights of creators. Staff members and students must respect, and otherwise not infringe these moral rights.

(33) The University will undertake reasonable endeavours to respect the moral rights of the creators of works when using those works for University purposes. Staff and students who are creators of IP that is owned by the University, or who grant permissions to the University to use their IP in accordance with this Policy, consent to the University infringing their moral rights where it would be reasonably necessary to enable use of the work for University purposes. This may include where a staff member creates documents or other works (for example, logos or other marketing collateral) for use in University operations, or where attribution is not feasible or convenient due to:

a. the nature of the work;
b. its intended use; or
c. the number of originators involved.

(34) The University is not obliged to take any action if the moral rights of creators are infringed by third parties.

Section 12 - Cultural Property Rights of Indigenous Peoples

(35) The University acknowledges and recognises that ICIP must be respected and preserved and will be considered in any dealings with intellectual property under this policy in accordance with the University's Aboriginal and Torres

Strait Islander Cultural and Intellectual Property Policy Protocol.

Section 13 - Registration of University IP

(36) The University will maintain an Intellectual Property Register, managed by Knowledge Exchange & Enterprise, which will be reported annually to the University Council.

Section 14 - Knowledge Transfer and Commercialisation of University IP

(37) When University IP is entered on the Intellectual Property Register, Knowledge Exchange & Enterprise will determine, in accordance with the Intellectual Property Procedure and the University's Risk Management Framework whether the University wishes to undertake knowledge transfer and/or commercialisation of the University IP.

Section 15 - Apportionment of Net Revenue from Commercialisation of University Intellectual Property

(38) Where the University decides to commercialise University IP, it will share the net returns from the commercialisation with the originator(s) in accordance with the Intellectual Property Procedure.

Section 16 - Advising Staff Members and Students of Their Rights and Obligations

(39) The University, through the Knowledge Exchange & Enterprise team, will take all reasonable steps to ensure that the provisions of the Intellectual Property Policy and Intellectual Property Procedure are made known to staff and students.

(40) In any dealings involving students and their intellectual property, the University will assist students to protect their intellectual property rights in accordance with the Intellectual Property Procedure.

Section 17 - Intellectual Property Agreements

(41) On a case-by-case basis following the determination period, the University may enter into agreements concerning intellectual property rights and ownership, including agreements to assign ownership of intellectual property. This includes agreements with external parties and agreements with staff member(s) and/or student(s) and may include assignment to a social enterprise and/or not for profit entity for public good activities.

(42) If the University wishes to enter into an agreement with an external party concerning the funding and ownership of intellectual property produced in the course of a University project, the University will, as far as is practicable, consult with the staff member(s) and student(s) who will be affected by the agreement.

(43) Staff members or students who wish to engage with an external funder and/or licensee regarding University IP must contact the Knowledge Exchange & Enterprise for commercial advice, negotiation, and approval of any agreement, in accordance with the University's delegations of authority.

(44) Where an agreement concerning intellectual property contains a confidentiality provision, the University may require any staff member(s) or student(s) involved in activities covered by that agreement to sign a licence or confidentiality agreement.

Section 18 - Assignment of University IP

(45) University IP may only be assigned to the originator(s) with the written approval of the relevant delegate in accordance with the Intellectual Property Procedure. Where University IP is assigned to a staff member or student, the University reserves the right to require a royalty-free, world-wide licence to the University for use for its purposes and reserves the right to include the licence conditions in any assignment of University IP.

Section 19 - Non-compliance with this Policy and Dispute Resolution

(46) Breaches of this Policy, including the misuse or unauthorised use of University IP, may constitute misconduct or serious misconduct, which may result in disciplinary or other action.

(47) The Intellectual Property Procedure sets out the processes by which concerns or potential breaches of this Policy may be raised, and how the University will resolve disputes arising from the matters set out in this Policy and its associated procedure.

Section 20 - Dispute Resolution

(48) A dispute arising from the interpretation or operation of this policy will be dealt with in accordance with the Intellectual Property Procedure.

Section 21 - Relaxing Provision

(49) The Vice-Chancellor or Deputy Vice-Chancellor (Research and Innovation) may relax any provision of this policy subject to any relevant Delegations of Authority.

Status and Details

Status	Current
Effective Date	1st May 2024
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Approval Authority	Vice-Chancellor
Approval Date	1st May 2024
Expiry Date	Not Applicable
Responsible Executive	Craig Simmons Deputy Vice-Chancellor (Research and Innovation)
Enquiries Contact	Alan Broadfoot Pro Vice-Chancellor Industry and Engagement Office of the Pro Vice-Chancellor (Industry and Engagement)

Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Asset" - Any tangible or intangible item (or group of items) that the University owns or has a legal or other right to control and exploit to obtain financial or other economic benefits.

"Award" - When referring to a University qualification, this term means an academic qualification approved by Academic Senate that is conferred when a student has met the relevant program requirements. For all other uses of this term, the generic definition applies.

"Commercial activities" - As defined in the University of Newcastle Act 1989.

"Controlled entity" - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

"Course" - When referring to a course offered by the University, a course is a set of learning activities or learning opportunities with defined, assessed and recorded learning outcomes. A course will be identified by an alphanumeric course code and course title. Course types include core courses, compulsory courses, directed courses, capstone courses and electives. For all other uses of this term, the generic definition applies.

"Personal information" - Has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

"Student" - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

"External parties" - Any individual or organisation external to the University.

"Intellectual property" - Intellectual property (IP), as defined by the World Intellectual Property Organisation, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications; and Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

"Program" - When referring to learning, a program is a sequence of approved learning, usually leading to an Award. For all other uses of this term, the generic definition applies.

"Research" - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

"School" - An organisational unit forming part of a College or Division, responsible for offering a particular course.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

"Unit" - When referring to an academic unit, unit means the proportional amount of academic credit allotted to a course. This term is used to define the requirements for a program award of the University and indicate a student's enrolment load. For all other uses of this term, the generic definition applies.

"Intellectual property rights" - All present and future rights to intellectual property including any inventions and improvements, trademarks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the Laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, or formula.

"Learning Management System" - The web-based system used to help facilitate online interactions between staff and students in their learning and teaching activities.

"Delegate" - (noun) refers to a person occupying a position that has been granted or sub-delegated a delegation of authority, or a committee or body that has been granted or sub-delegated a delegation of authority.