

# Intellectual Property Policy

## Section 1 - Purpose

(1) The provisions of this Policy have been established to manage and protect intellectual property arising out of the work of Charles Sturt University (the University), its staff and students, and where appropriate, facilitate its commercialisation.

(2) The Policy shall form part of the Conditions of Employment of academic and general staff of the University.

### Scope

(3) This Policy applies to both full-time and fractional time staff and to students of the University.

### Principles

(4) The University aims to encourage an academic environment in which teaching, learning and research may flourish.

(5) The University adheres to the principle that knowledge and ideas should be made widely available by publication and other means for public benefit.

(6) Where commercial considerations are judged to be in conflict with this principle, the University shall seek to resolve any conflict to ensure that this principle is not unduly compromised.

### References

(7) This Policy is to be read in conjunction with the:

- a. Outside Professional Activities Policy; and
- b. Code of Conduct.

## Section 2 - Glossary

(8) For the purposes of this Policy, the following definitions apply:

- a. Dean means a Dean of a Faculty or, where the context permits, a Director of a University Centre, an Executive Director or Head of School.
- b. Intellectual property - means:
  - i. any proprietary right which arises under, or is capable of being obtained under, legislation relating to copyright, patents, designs, trademarks, circuit layouts or plant varieties; and
  - ii. any common law intellectual property, including know-how, trade secrets and confidential information;

and means and includes such rights to the extent that they are added to or varied from time to time by amendments to relevant legislation.

- c. Intellectual Property and Outside Professional Activities Committee - means the committee established under

Part H.

- d. Commercialisation Officer - means a person reporting to the Deputy Vice-Chancellor (Research, Development and Industry) with responsibility for implementing decisions relating to the commercialisation of intellectual property.
- e. Invention - means and includes any new and useful, or new and useful improvement of, a process, machine, product or other manufactured item or composition of matter, whether or not it is patentable and whether or not it has been reduced to writing or any other physical form of expression, and includes any related know-how and any documents, computer software or other medium in which any such invention is described or comprised.
- f. Net income - means sale, royalty, licensing and other income received from the commercial exploitation of intellectual property less legal and other fees and expenses in establishing and protecting the intellectual property and in negotiating and concluding any licensing or other agreements relating to the intellectual property.
- g. Originator - means an employee of the University who is an author, creator or inventor of work or subject matter in which intellectual property may or does subsist.
- h. Specific contribution - in relation to the creation of intellectual property means funding, resources including staff resources other than the salary of the Originator, facilities or apparatus which is identified by the University for creating intellectual property.
- i. Centre of the University - means a designated Centre approved by the University Council or by the Vice-Chancellor acting under delegation.
- j. Charles Sturt University market - means students who are enrolled with or associated with Charles Sturt University or its affiliates for a course, subject or unit of instruction.

## Section 3 - Policy

### Part A - Ownership

(9) The University owns all intellectual property which is created by an Originator in pursuance of the Originator's duties under a contract of employment with the University and including materials produced by Centres of the University. Examples of such intellectual property include, but are not limited to:

- a. inventions; and
- b. copyright work, including courseware (books, print, videos, CD-ROMs, manuals, audio-visual recordings, computer software or other materials) created specifically for use in, or in connection with, a course, subject or unit offered by the University.

(10) Despite clause 9, Originators own intellectual property created by them in the following copyright works, the subject matter of which is primarily concerned with scholarship, research, artistic expression, creativity or academic debate:

- a. books, articles, or other similar works, whether in written or any other form;
- b. artistic works created by researchers in fine art or design;
- c. musical works or dramatic works written, created or composed by an Originator; and
- d. any other professional work created by an Originator;
- e. except for such works which:
  - i. were prepared for University course work and teaching;
  - ii. were created using intellectual property owned by the University;
  - iii. are film or sound recordings or works of art or other professional works in respect of the creation of

which the University has made a specific and significant contribution of funding, resources, facilities or apparatus and which led to the creation of such works; and

iv. were prepared for invention and copyright work referred to in clause 9.

(11) For materials developed for use in connection with a course, subject or unit offered by the University, where an external publisher seeks to commission an Originator of the University as author, the author must seek approval from the Vice-Chancellor through the relevant Dean and the Intellectual Property and Outside Professional Activities Committee (see Part H).

(12) The University will waive rights of ownership for teaching materials developed by an Originator in an area not related to subjects offered by the University or not involving any significant commitment of the University resources including staff time.

(13) Despite any contrary provision in this Policy, all contracts existing at the time of the adoption of this Policy that are between the University and Originators, governments, corporations and other external organisations, and that relate to the University intellectual property, shall remain in full force and effect until such contracts expire. This policy shall take effect after existing third party contracts expire.

(14) If the University intellectual property arises out of or in connection with a project that is the subject of an agreement with a third party, including Co-operative Research Centres, which provides for the ownership of such intellectual property and the University has agreed in writing to the provisions of that agreement, then, despite any contrary provisions in this Policy, the provisions of that agreement will govern ownership of all rights in the intellectual property.

## **Ownership by Students**

(15) In the absence of a specific contract to the contrary, students own the intellectual property which they invent.

(16) Normally the University does not encourage the involvement of students in commercial activities. However, it recognises that there may be exceptions when postgraduate and honours students may benefit from and contribute to consulting, contract research, collaborative research and professional practice.

(17) In particular, where intellectual property is concerned:

- a. students shall have a right to have their thesis or other work examined;
- b. students shall have the right to submit their thesis and work for publication except where, for reasons of confidentiality, the Vice-Chancellor obtains the agreement of the supervisors and the student to restrict public access to the work for a limited period, usually not exceeding eighteen months; and
- c. staff who are supervisors of a student shall report on the intellectual property disclosure form to the Commercialisation Officer and to the student:
  - i. as soon as it becomes apparent to them that work under supervision contains intellectual property to which the University may have a claim;
  - ii. where a student has an agreement or employment arrangement with a third party who may claim rights;  
or
  - iii. where a student at enrolment brings intellectual property to be used in candidature.

(18) Ownership vests in the University in the following exceptions to student ownership:

- a. where a student participates as part of a team with University staff in consulting, contract research or collaborative research;
- b. where a student uses pre-existing intellectual property owned by the University;

- c. where a student is a co-author with a member of staff in work which is commercial or confidential;
- d. where a student is a co-inventor with a member of staff, whether the invention is patented or not; or
- e. where a student works as part of a research team in a Co-operative Research Centre.

(19) In these circumstances the Vice-Chancellor may require the student to assign their intellectual property rights to the University.

(20) The University through the Commercialisation Officer shall advise students of their rights and promptly alert them to any hindrance to ownership of intellectual property or publication. Students shall have access to the Intellectual Property and Outside Professional Activities Committee (Part H).

## **Part B - Use by Non-Owners**

(21) Where the University owns copyright in a copyright work, the Originator is granted by operation of this Policy a non-exclusive, royalty-free and irrevocable licence to draw from the work for the Originator's research, teaching and professional practice.

(22) Where an Originator owns copyright in a copyright work which is created in the circumstances referred to in clause 10, the University is by operation of this Policy granted a non-exclusive, royalty-free and irrevocable licence to reproduce, publish, perform, broadcast, disseminate and otherwise use the work for University teaching, research and professional purposes.

(23) An Originator who leaves the employ of the University may apply at any time for the release of the copyright.

## **Part C - University Obligations**

(24) Where the University publishes or causes to be published a copyright work owned by the University pursuant to this Policy:

- a. without adaptation or other modification, the University shall ensure that the authorship of the work is acknowledged in the publication; or
- b. with adaptation or other modification, the University shall consult with the Originator of the work on whether the authorship of the work is to be acknowledged and on the form of words of that acknowledgment.

(25) Where the University assigns or licenses a copyright work created by an Originator pursuant to this Policy, the University shall ensure that a condition of the assignment or licensing agreement requires the purchaser or licensee to use their best efforts to obtain the agreement of the Originator of the work on whether the authorship of the work is to be acknowledged and, if so, the form of that acknowledgment.

(26) Where the University owns intellectual property other than copyright, created by an Originator pursuant to this Policy, it shall ensure that the Originator is acknowledged as the inventor or co-inventor, as the case requires, in any relevant patent application/s or other documentation.

## **Part D - Commercialisation**

(27) Where teaching resources are published by the University, no royalty is payable to Originators for material supplied or sold to University students. However, for other markets, disbursement of royalty income to the University and the Originator shall be agreed on the basis of individual contracts and approved by the Vice-Chancellor. Such agreements must be in place before commercialisation occurs.

(28) Where an Originator creates intellectual property in the form of invention, which for the purposes of this Policy includes know-how that is owned by the University pursuant to this Policy, and which is, in the opinion of the

Originator, Dean or Commercialisation Officer, capable of commercial exploitation, the Originator shall provide all necessary details on the intellectual property disclosure form and submit the form to the Commercialisation Officer.

(29) Following consultation with the Originator and the Intellectual Property and Outside Professional Activities Committee, the Commercialisation Officer shall recommend to the Vice-Chancellor whether the University should become involved in the commercialisation of any intellectual property which is disclosed under clause 10 or is otherwise brought to the notice of the Vice-Chancellor.

(30) The Commercialisation Officer shall actively pursue commercial opportunities in consultation with the Originator and, within a period of six months, or sooner if possible, the Vice-Chancellor shall decide whether to assign the property to the Originator.

(31) Where the University has decided not to become involved in the commercialisation of any intellectual property, then the University has waived its future rights in respect of that intellectual property.

(32) If the University decides to retain the intellectual property, the Vice-Chancellor may subsequently, at any time, offer to assign it to the Originator. If the Vice-Chancellor so offers to assign any intellectual property disclosed under clause 28, then:

- a. the University may request delay of the publication of research results for up to 12 months to protect the commercial viability of the innovation or commercially exploitable intellectual property;
- b. the Originator shall be free to protect, exploit or otherwise use the intellectual property at their discretion and at the Originator's cost;
- c. if the Originator so requests, the relevant intellectual property rights shall be promptly assigned to the Originator by the University; and
- d. the Originator shall not use University resources beyond those normally used as part of the Originator's ordinary employment with the University unless the written approval of the Vice-Chancellor and the appropriate Dean is given.

(33) Where the University is the owner of any intellectual property in an invention and wishes to commercialise or otherwise exploit the invention under the terms of this Policy, the University is free to commercialise or otherwise exploit or use such intellectual property and to execute such documents as the University deems necessary for the purposes of the commercial exploitation of that invention, consistent with the objectives of this Policy.

(34) Where the University decides to commercialise or otherwise exploit the intellectual property in an invention, the University shall inform and, as necessary, consult with the Originator of the invention, within eight (8) weeks of the initial contact made by the Originator, on the proposed course of action, which the University shall have an absolute discretion to determine. This may include, without limitation, the following:

- a. the commercialisation strategy;
- b. the filing of a patent application/s in the name of the University with the Originator/s as the named inventor/s;
- c. the identification of potential licensees, assignees or joint venture parties;
- d. the need for confidentiality by the University and/or the Originator; and/or
- e. reporting on disbursement of income at a minimum interval of six months.

(35) Where the University decides to be involved in the exploitation of intellectual property in any invention, the Originator shall provide all reasonable assistance in the exploitation process, consistent with terms and conditions of employment by the University by, for example, attending meetings with potential commercial partners and advising on further development of the invention.

## **Part E - Disbursement of Income**

(36) Net income received by the University as a result of the successful commercialisation of intellectual property in any invention or in teaching materials sold beyond the Charles Sturt University market shall be distributed as follows (see the "Outside Professional Activities Policy" for further details):

- a. 50% of net income to the Originator;
- b. 25% of net income to the appropriate Faculty, School, Centre or Division; and
- c. 25% of net income to the University account nominated by the Vice-Chancellor.

(37) These percentages may be varied by mutual agreement among the parties.

(38) Where more than one Originator is involved, the distribution of their share of the net income between themselves will be a matter for them to determine except that, where there is a failure to agree, then income shall be distributed in proportions to be determined by the Intellectual Property and Outside Professional Activities Committee.

(39) The revenue sharing arrangements in clause 36 shall not be available to Originators who are specifically contractually obliged to create and develop intellectual property or inventions so far as that intellectual property or those inventions are concerned. Any payments to Originators in this category, other than payments governed by their contract of employment, shall be determined by the Vice-Chancellor on the recommendation of the Intellectual Property and Outside Professional Activities Committee.

## **Part F - Education Program**

(40) The University shall conduct an ongoing intellectual property education program with the following objectives:

- a. to inform staff and students of their rights, responsibilities and opportunities in relation to intellectual property;
- b. to inform staff and students of any changes to policy; and
- c. to generate a better understanding of intellectual property issues in general.

## **Part G - Commercialisation Officer**

(41) The Commercialisation Officer shall have the duties, responsibilities and powers conferred by this Policy.

## **Part H - Intellectual Property and Outside Professional Activities Committee**

(42) The Intellectual Property and Outside Professional Activities Committee comprises:

- a. the Deputy Vice-Chancellor (Research, Development and Industry) (Presiding Officer);
- b. the Chief Financial Officer or nominee;
- c. up to three (3) staff members nominated by the Vice-Chancellor, following consultation with the Deans and Heads of School;
- d. one postgraduate research student nominated by the Deputy Vice-Chancellor (Research, Development and Industry) after consultation with the student associations; and
- e. other persons, who may be external to the University, possessing expertise relevant to the field, co-opted from time to time by recommendation of the above committee to the Vice-Chancellor;
  - i. in attendance:
    - the Commercialisation Officer

- the University Legal Officer

(43) The Committee shall:

- make recommendations to the Vice-Chancellor in respect to approvals under the Intellectual Property and Outside Professional Activities Policies, including any condition that should be attached to any approval;
- oversee the implementation of the Intellectual Property and Outside Professional Activities policies, with special attention to requirements on information and education;
- conduct a review of existing policies at periodic intervals, or as circumstances demand, and recommend appropriate changes to the Vice-Chancellor;
- make recommendations to the Vice-Chancellor on approvals for publication under clause 11 of this Policy;
- make recommendations to the Vice-Chancellor on individual contracts on publication and disbursement of royalty as described in clause 27 of this Policy;
- consider and make recommendations to the Vice-Chancellor on assignment of University intellectual property to Originators under clauses 29 to 32 of this Policy;
- recommend to the Vice-Chancellor whether the University should lodge the Complete Specification for any provisional patent application; and
- provide advice, on request, to the Vice-Chancellor on any matter relating to outside professional activities, intellectual property and commercialisation.

(44) The Committee shall meet at least twice each year.

## **Part I - Review**

(45) The decision of the Vice-Chancellor in relation to Intellectual Property shall not be subject to internal appeal or review.

(46) Nothing in this Policy prevents an employee from accessing the University's [Complaints Policy](#) and related procedures.

## **Part J - Authorised Signatories**

(47) The authorised signatory on behalf of the University on matters relating to intellectual property or outside professional activities shall be the Vice-Chancellor.

## **Section 4 - Procedures**

(48) Nil.

## **Section 5 - Guidelines**

(49) Guidelines, forms and advice on intellectual property - contact the Commercialisation Officer in the Centre for Research and Graduate Training.

## Status and Details

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