Intellectual Property Policy

Section 1 - Purpose

(1) To promote the advancement and transmission of knowledge generated in connection with teaching or research within the University, this document describes the Charles Sturt University (the University) policy relating to ownership, management, development and utilisation of intellectual property (IP) created by staff and students of, and visitors to the University.

(2) This policy also sets out the obligations for the use of third-party IP by the staff and students of, and visitors to, the University.

Scope

(3) This policy applies to all staff, all students, and all visitors to the University, and whether employed, enrolled, or engaged in any role or activity in association with the University.

Section 2 - Policy

Principles

(4) Utilisation of University intellectual property (IP) is guided by the following principles:

a. The University will endeavour to facilitate the development and utilisation of IP in a professional and timely way in order to make the University easy to deal with.
b. The University will endeavour to ensure that IP is utilised for maximum benefit according to the University's goals, including supporting staff and students in entrepreneurial and commercial endeavours, and to ensure that risks of IP utilisation are managed appropriately.
c. The University actively encourages students and staff to undertake entrepreneurial research leading to the creation of IP that is relevant to challenges faced by society and in conjunction with industry, government and community groups.
d. Ownership of IP will be clearly and cleanly defined to facilitate its ready utilisation, including commercialisation.
e. Where project IP has been generated and is funded by industry, the University will endeavour to support commercialisation of the project IP, in the field specified, by the industry partners.
f. In developing the arrangements for the sharing of the benefits of the utilisation of IP, the University will seek to be generous with the originators of the IP.
g. The University may support creation of new ventures by staff (based on University IP) and students (based on student project IP), through appropriate licensing or assignment of IP in relevant fields in exchange for future benefits. The University makes no commitment to provide any funding to such ventures beyond what has been committed to develop the IP being licensed/assigned.
h. In assessing the benefits of the application of its IP, the University will have regard to societal, commercial, educational, cultural and environmental factors at regional, national and international scales.
i. The University respects First Nations cultural and intellectual property and the intellectual property and moral

rights of others and expects staff, students and visitors to do the same.

Related documents

(5) This policy is to be read in conjunction with the University's:

a. Employment Conditions Procedure - Additional Employment and University Consultancies
b. Code of Conduct
c. Guidelines for Commercial Activities Policy
d. employment contracts
e. Delegations and Authorisations Policy.

(6) In the event that there is any real or apparent lack of clarity, or conflict between any part of this policy and any other policy, code, or other rule then the matter shall be determined by the Deputy Vice-Chancellor and Vice-President (Research).

Ownership of intellectual property

Intellectual property created by staff

(7) The University owns all intellectual property (IP) created by staff, including emeritus and adjunct appointees:

a. in the course of their employment or appointment with the University
b. in the course of using funding, facilities or resources of the University, other than as a student, or
c. if any other agreement, arrangement or law provides that the University owns the IP (e.g. works specially commissioned by the University outside an employment contract).

(8) The University encourages staff to publish the scholarly works which they have created, even when the University owns the IP in the scholarly works, except where this is not possible due to legal obligations, such as contractual or confidential information restrictions binding staff or the University. Staff are responsible for ensuring they have obtained all necessary rights and permissions before publishing scholarly works, and must ensure that the publication of any scholarly work does not limit the University's rights in the scholarly work, unless the University has agreed otherwise in writing.

(9) IP created in a Voluntary context by a member of staff becomes the property of the member of staff when it is created, unless agreed otherwise with the University. If a member of staff is also a student, IP created by that staff member solely in the course of studying at the University becomes owned as described below (see the 'Intellectual property created by students' heading).

(10) If IP created by staff and owned by the University is utilised and, in the opinion of the University acting reasonably, generates a substantive financial return for the University, the University will share that return as described below (see the 'Sharing benefits with staff and students' heading).

(11) Staff must complete such documents as the University reasonably requires to enable the assignment of ownership of IP in the University as described in this policy.

(12) Staff must not act on behalf of themselves or falsely appear to act on behalf of the University in dealing with IP owned by the University or a University partner under an arrangement with the University, particularly in relation to decisions to protect or utilise, except under the University's Delegations and Authorisations Policy.

(13) If staff become aware that any University IP is likely to be of significant value for utilisation or present legal, commercial or reputational risk to the University (e.g. research outputs which require regulatory approvals), they must

notify the Deputy Vice-Chancellor and Vice-President (Research) as soon as practicable.

Intellectual property created by students

(14) The University does not normally assert ownership of IP created by students. No student will be required to assign their IP to the University in order to qualify for admission to or to complete the assessment requirements of a course in which the student has been admitted, unless it is a requirement of a third party.

(15) The University may require assignment of IP owned by a student if the student created the IP:

a. in the course of undertaking research or education at the University
b. using University IP, or
c. in the course of undertaking a project for which funding has been provided to the University by a third party.

(16) The University may, at any time, require a student participating in a research activity or other project to assign IP to the University. The Student Intellectual Property Procedure [in development] outlines scenarios where assignment of student IP may be required for a student to work on a University project or internship.

(17) Where a student assigns IP to the University and the IP is utilised by the University or a third party, the student will be deemed a creator for the purposes of this policy.

(18) If IP created by students and owned by the University is utilised and, in the opinion of the University acting reasonably, generates substantive financial return for the University, the University will share that return as described below (see the 'Sharing benefits with staff and students' heading).

(19) Students must not act on behalf of themselves or falsely appear to act on behalf of the University in dealing with IP owned by the University or a University partner under an arrangement with the University, particularly in relation to decisions to protect or utilise.

(20) If students become aware that any University IP is likely to be of significant value for utilisation or present legal, commercial or reputational risk (e.g. research outputs which require regulatory approvals), they must notify the Deputy Vice-Chancellor and Vice-President (Research) as soon as practicable.

Intellectual property created by visitors

(21) The University does not, as a matter of course, assert ownership of IP created by visitors (including visiting fellows and other visiting appointments). However, where the visitor is working as part of a project or research activity, in particular where the activity is externally funded, the University may require the visitor to agree to an IP arrangement in line with project requirements in order to become involved, or continue involvement in, the activity.

(22) If visitors become aware that any University IP is likely to be of significant value for utilisation or present legal, commercial or reputational risk (e.g. research outputs which require regulatory approvals), they must notify the Deputy Vice-Chancellor and Vice-President (Research) as soon as practicable.

Intellectual property created as part of a research activity or other project

(23) The University's objective is to expand its involvement, and that of staff and students, in research activities and projects with external partners. Therefore, the University actively encourages staff and students to pursue teaching, learning, research and collaboration opportunities that may result in IP which can be utilised for the benefit of the University, staff, students, industry and society. Research must be consistent with the National principles of Intellectual Property management for publicly funded research.

(24) The University may allow external partners, such as industry or government bodies or research institutions, to own IP created as part of a research activity or other project undertaken with those partners, provided that:

a. commercial arrangements with partners are satisfactory to the University, including being compliant with University policies and satisfactory in relation to risk, cost and benefit
b. the University is satisfied that the partner is best placed and is willing to maximise the opportunity for, and benefits of, the utilisation of the IP, and
c. ownership and licensing rights in respect of IP generated as part of a research activity or other project are be addressed in the project contract(s) with the external partner(s).

(25) If the University agrees not to own IP created as part of a research activity or other project, the University will generally require access to use that IP for research and/or teaching purposes.

Sharing benefits with staff and students

(26) The University will recognise the contributions of originating staff and students when utilising IP owned by the University.

(27) The primary purpose of utilisation of University IP will not necessarily be to generate financial return, but when substantial financial return from utilisation of IP is generated, it will distribute the net revenue to the originator (staff and/or students) and the University in general proportion to their respective contributions, subject to:

a. the terms of any third-party agreement, including with a partner, and
b. any agreement with the originator(s).

(28) The University's decision regarding respective contributions will be made in good faith and in consultation with all originators known to the University.

(29) The University is not liable to pay any originator for any IP creation other than as set out in this policy, as required by law or as agreed in writing.

Maximising utilisation potential

(30) The University recognises that it may not always be best placed to utilise University IP. The University welcomes proposals, suggestions and enquiries from staff, students, visitors and other potential partners regarding utilising such IP in a manner which is consistent with this policy. Enquiries should be directed to the Pro Vice-Chancellor Research (Performance and Governance). The University will endeavour to make utilisation decisions promptly.

(31) Part of maximising the potential for utilisation involves minimising legal, commercial and reputational risk. Staff, students and visitors must take appropriate steps to ensure that IP owned by the University, or a University partner under an arrangement with the University, is managed in a manner that protects the interests of the University and its partner, including in regard to possible utilisation.

(32) No staff, students or visitors may disclose confidential information in relation to any IP owned by the University or a University partner under an arrangement with the University without explicit authorisation as set out in the Delegations and Authorisations Policy and relevant delegation schedule. Any such disclosure must be authorised by the University.

Respecting moral rights

(33) The University recognises its obligations in respect of the moral rights of the originators of works in accordance with the Copyright Act 1968.

(34) The University expects staff, students and visitors to comply with the Copyright Act 1968 in recognising the moral rights of the originators of works that are used in University activities, projects and courses.

(35) The University expects University partners and other third parties to respect the moral rights of University staff and students, particularly in regard to attributing authorship of research outputs and published materials created by University staff and students, in accordance with the Copyright Act 1968.

Respecting Indigenous cultural and intellectual property

(36) First Nations peoples are the Indigenous people of Australia – Aboriginal and Torres Strait Islander peoples. The University recognises that First Nations peoples are the owners of Indigenous cultural and intellectual property (ICIP) including Indigenous knowledge, ideas, cultural expressions and cultural materials and that this is living heritage. The University respects ICIP rights and expects staff, students and visitors to respect ICIP rights in relation to University activities, projects and courses.

(37) The University will comply with legislation, national and international laws, ethics, standards and protocols and prevailing guidelines of appropriate conduct concerning the use of First Nations cultural heritage, traditional knowledge and cultural expressions, including the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research and the Australia Council for the Arts' First Nations Cultural and Intellectual Property Protocols.

(38) Students, staff and visitors must attribute First Nations people for the use of their ICIP.

(39) Students, staff and visitors must obtain the free, prior, informed consent (FPIC) of relevant Indigenous peoples and organisations for the use of ICIP. This should include clear documentation to ensure all rights to ICIP are negotiated including benefit sharing.

(40) Any disputes about ICIP should be managed respectfully and in culturally appropriate ways, under the guidance of the Office of Pro Vice-Chancellor First Nations Strategy.

Respecting the rights of other intellectual property owners

(41) The University recognises the rights of other IP owners external to the University. The University respects the IP rights of others, in accordance with applicable laws.

(42) All staff, students and visitors must take appropriate steps to minimise the risk of breaching the IP rights of others in relation to University activities, including by:

a. obtaining permissions to use other IP in activities, projects and courses, where necessary and where the University does not already have a licence or arrangement for such use
b. declaring background IP used in activities and projects, and
c. complying with the terms of any contracts agreed by the University for the use of other IP, such as background IP provided by partners for use in collaborative projects.

Dispute resolution

(43) Any queries or disputes in relation to this policy or its interpretation will be determined by the Deputy Vice-Chancellor and Vice-President (Research).

(44) Where a person wishes to appeal a decision made under this policy, or has a complaint about their treatment, quality of service or the conduct of University staff, the following policies apply:

a. For students, see the University University Student Appeals Policy and University Student Appeals Procedure.
b. For students, staff or visitors, see the Complaints Management Policy, Complaints Management Procedure and Complaints Procedure - Workplace.

(45) Nothing in this policy limits or affects the University's right to take legal or other action it considers appropriate in

the circumstances, in relation to IP.

Section 3 - Procedures

(46) Nil.

Section 4 - Guidelines

(47) Nil.

Section 5 - Glossary

(48) For the purpose of this policy:

a. Background IP – means IP owned by someone other than the University which is used in an activity or project with the University, despite being created or acquired for other purposes.
b. Confidential information – means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form which:
    i. is by its nature confidential
    ii. has been designated as confidential
    iii. is capable of protection law or equity as confidential information, or
    iv. is derived or produced from confidential information.
    v. Confidential information does not include information that is public domain, or that is independently known or developed by the person receiving the information, other than as a result of a breach of any obligation of confidentiality owed by or to any other person.

c. Costs - means any amount, including any Australian or foreign taxes, charges or other imposts, or any legal or professional fees, the University incurs or commits, to protect, develop or utilise IP. Costs include the salaries, wages and expenses paid by the University, and the cost of any equipment, material and resources.
d. Course - means any whole or part program of study conducted by or on behalf of the University.
e. Create - means to produce, invent, design, enhance, generate, discover, make, originate or bring into existence, whether alone or with another person, and 'creation' has a corresponding meaning.
f. Indigenous cultural and intellectual property – means Indigenous Australian peoples' cultural practices, resources and knowledge systems. Each generation has cultural responsibilities to safeguard this heritage and pass it on to the next generation as part of expressing their cultural identity. These rights are reflected in article 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
g. Intellectual property (IP) - includes rights relating to the outcomes of human creative effort recognized at law anywhere in the world, including rights of registration or application for registration, including those relating to:
    i. literary (including computer programs), artistic, musical, dramatic and scientific works
    ii. multimedia subject matter
    iii. performances of performing artists, phonograms and broadcasts
    iv. inventions in all fields of human endeavour
    v. scientific discoveries
    vi. industrial designs
    vii. trade secrets and confidential information
    viii. trademarks, service marks, branding, business and domain names and any other commercial names and

designations

ix. plant varieties, and/or

x. circuit layouts.

h. Moral rights – has the meaning as per the Copyright Act 1968 which recognises three types of moral rights:

i. An author's right to be identified as the author of a work – known as the right of attribution of authorship.

ii. The right of an author not to have a work falsely attributed – known as the right against false attribution.

iii. An author's right to not have a work subjected to derogatory treatment that prejudicially affects their honour or reputation – known as the right of integrity.

i. Net revenue – means the monetary amount received and retained by the University from IP utilisation after all costs have been deducted.

j. Originator - means staff, students or visitors who create, in whole or part, University IP regardless of whether the University IP is created by one person or jointly by two or more people.

k. Other IP – means intellectual property which is not University IP. Other IP includes intellectual property owned by third parties which is used in courses under licence or background IP which is provided by partners for the University to use in collaborative projects.

l. Protect - means any action taken, or which is required, to protect a claim in connection with IP and includes registration anywhere in the world or enforcement or assertion of that IP in any legal proceedings.

m. Scholarly work - means a copyright work intended for academic publication or for public exhibition, display or performance including an article, conference paper, creative work, manuscript, book, music composition or any like publication, exhibition, display or performance but does not include course or teaching material.

n. Staff - means a person who is a member of the University's staff (whether academic or otherwise and whether adjunct, full-time, part-time or casual) at the time they create any University IP.

o. Student - means a person who is enrolled as a student of the University at the time they create any University IP.

p. Teaching material - means any work created in any medium by staff in the course of their employment with the University (but regardless of whether this occurs under a specific direction to do so) as content, an aid or a tool for instruction in, or for the purposes of, a course.

q. University IP – means intellectual property generated by staff and visitors during or for the purposes of, University activities and projects.

r. Utilise – means to exercise IP to obtain any advantage or benefit (including income, in-kind return or reputational benefit), and includes to:

i. market, manufacture, sell, hire, or otherwise commercialise or exploit IP for a financial or non-financial benefit

ii. provide goods or services incorporating IP, and/or

iii. license the IP to a third party, including providing a licence to a:

- partner organisation to use the intellectual property as part of a collaborative project
- partner organisation to allow the partner to engage in utilisation, or
- publisher, to allow the publisher to publish a work.

iv. 'Utilisation' has a corresponding meaning.

s. Visitor - means a person who is not staff or a student of the University, but who participates in a University research activity or teaching or other project, including a person who takes part in any research, teaching or other activity that would normally be conducted by, or involve, staff or students. See also the Appointments Procedure - Visiting and Adjunct Appointments.

t. Voluntary work – means a work created by staff or students of their own volition and not for the purposes of a course, or in the course of their employment, or under the direction or control, or at the specific request or demand, of the University.

u. Work - includes a literary work, a dramatic work, a musical work an artistic work, cinematograph film, multimedia work or computer program or a combination of any such works.

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Glossary Terms and Definitions

"**Student**" - means a person who is or was enrolled in, or seeking admission to, a course or subject offered by the University or a partner institution or organisation, or who is given permission to audit a course or subject offered by the University or a partner institution or organisation; it includes a candidate for a higher degree by research award, as well as students enrolled in online or on-campus study modes. A student remains a student while on approved leave of absence.