

Intellectual Property

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Business Owner:	Deputy Vice Chancellor
Approval Authority:	Vice-Chancellor

1. PURPOSE

- 1.1. This policy aims to contribute to the development of an environment at Lincoln University in which all parties engaged in the creation of intellectual property (IP) are encouraged to produce, disseminate and utilise IP for the benefit of the institution, its employees, students and the wider community. And, in the spirit of the Treaty of Waitangi the University hereby states its intention to recognise and provide for Māori approaches to the expression and protection of their IP.
- 1.2. While Lincoln University asserts certain ownership rights to IP created by its staff and students (see Section 4), it intends to take a partnership approach to the sharing of both non-financial and financial benefits generated by disclosure and/or commercialisation of that IP.

2. DEFINITIONS

- 2.1. *Academic Presenting Materials* means materials used in the presentation of lectures, tutorials, seminars, workshops, field classes, laboratory classes and other teaching activities and includes but is not limited to such materials as lecture notes, web pages, overhead transparencies, slides, photographs, maps, diagrams, handbooks, promotional and advertising brochures, and multimedia items
- 2.2. *Commercialisable IP* means intellectual property which has reasonable potential to be sold, licensed or otherwise utilised in return for financial reward or benefit.
- 2.3. *Creator* means any person who provides intellectual input to the creation of intellectual property.
- 2.4. *Intellectual Property (IP)* means new knowledge gained through the application of intellectual capacity
- 2.5. *Intellectual Property Rights (IPR)* means the legal rights resulting from intellectual activity, whether arising by statute or common law and whether registrable or unregistrable, and includes copyright, trademarks, patents, designs, plant variety rights, layout designs, and rights to inventions, trade secrets and confidential information
- 2.6. *Staff* means any employee of Lincoln University. If a student (see below) is also a University employee, they are considered as staff with regard to intellectual property developed as a result of employment, and as a student with regard to other intellectual property. Visitors to the University who make substantial use of University resources are considered as staff with respect to any intellectual property arising from such use.

- 2.7. *Student* means any full-time or part-time graduate or undergraduate student, regardless of whether the student receives financial aid from the University or from outside sources. It is the responsibility of students who are also employees of other outside entities to resolve any conflicts between this policy and provisions of agreements with their employers prior to beginning any undertaking at Lincoln University that will involve the development of intellectual property.
- 2.8. *Study Supervisor* means an academic staff member of Lincoln University who guides student study and provides intellectual input. The intellectual property ownership rights of supervisors in fulfilling this role shall be those that apply in other (non-student) areas of academic pursuit.
- 2.9. *Owner* means any organisation, individual or student that has legal claim to ownership rights to intellectual property created through or in partnership with Lincoln University staff and/or through use of Lincoln University funds and/or facilities.

3. DESIRED OUTCOMES

- 3.1. Having due regard to the ownership provisions defined in Section 4, this policy seeks to:
- 3.1.1 Reflect the unique nature of a university environment;
 - 3.1.2 Reflect the University's commitment to the Treaty of Waitangi in the protection and negotiated use of Māori/iwi intellectual property
 - 3.1.3 Recognise the need for Lincoln University to protect, effectively utilise and maximise the financial and non-financial benefits derived from the IP generated as part of its core activities;
 - 3.1.4 Underpin a partnership approach to the distribution of benefits derived from IP;
 - 3.1.5 Support academic staff in their pursuit of normal scholarly activity;
 - 3.1.6 Reflect the various contributions made by the institution, its staff and its students;
 - 3.1.7 Facilitate Lincoln University's responsibility to ensure transfer of its IP to the wider community for the benefit of that community;
 - 3.1.8 Provide an incentive for the institution, its staff and students to fully participate in the creation and dissemination of IP;
 - 3.1.9 Ensure that appropriate financial or other rewards reflect contributions made;
 - 3.1.10 Enhance the prospect of the University gaining a return (monetary or non-monetary) from the intellectual input of its staff and students;
 - 3.1.11 Foster corporate identity and institutional loyalty;
 - 3.1.12 Provide a resource for industry, commerce and the community in general; and
 - 3.1.13 Ensure judicious use of public funds.

4. FOUNDING PRINCIPLES

- 4.1. This policy is based upon the following principles relating to Lincoln University and its place in society:
- 4.1.3 It is consistent with the University's strategic intent;
 - 4.1.2 Lincoln University has an obligation to transfer its IP to the wider community for the benefit of that community;
 - 4.1.3 Lincoln University must provide effective interfaces with the wider community to ensure that transfer is successfully achieved; and
 - 4.1.4 Lincoln University has a commitment to Māori under the Treaty of Waitangi, and recognises Māori intellectual property to be a taoka within the terms of the Treaty.
- 4.2. This policy is based upon the following principles relating to staff, students and the University institution:
- 4.2.1 IP is created by individuals, alone or in groups. Where those individuals are employees of the University, the employer/employee relationship determines certain ownership rights according to evolving jurisprudence and related developments under the Treaty of Waitangi.
 - 4.2.2 Should financial return be an outcome of the creation of IP, then there should be incentives for all parties to pursue such financial rewards together, consistent with the expressed goals of this policy. The distribution of these rewards should reflect, in so far as is possible, the value of the contributions made, the value of the contributions made through existing IP and the resources contributed by and risks assumed by both the creator(s) and Lincoln University in developing and commercialising the IP.
 - 4.2.3 The University will, where appropriate, seek to pursue commercial development and application of research results. In such circumstances the University reserves the right to limit disclosure for the benefit of shareholders in the IP concerned.

5. OWNERSHIP

Staff

- 5.1. In keeping with academic traditions and normal scholarly activity, and with the exceptions noted in paragraph 4.3, the University waives its entitlement to copyright to the following types of IP: books (including textbooks), published papers, photos, Academic Presenting Material articles, films and other similar audio-visual works, and sound recordings.
- 5.2. With due regard to the exceptions noted in paragraph 4.1 and claims made in paragraph 4.3, Lincoln University asserts ownership of all IP developed by a staff member either in pursuance of their contract of employment or using the resources or facilities of the University.
- 5.3. The exceptions to the University's waiver on ownership of copyright noted in paragraph 4.1 are as follows:
- 5.3.1 Lincoln University claims copyright on all computer software code and databases, but not text files or any other form of electronic storage used as a medium for the transfer of written or visual information when it concerns the waived ownership items listed in paragraph 4.1.
 - 5.3.2 Lincoln University does not claim ownership of copyright of course materials

created by its employees in the course of their employment, unless those works or materials have been expressly commissioned by the University (i.e. created with the use of specific funding or allocation of resources) and agrees that copyright in such works belongs to the author. Notwithstanding paragraph 4.3.2, the University shall have a permanent, non-exclusive, royalty-free licence to use course materials created by its staff in the course of their employment, provided that such use is confined to research or teaching of courses offered by the University. Where there is a legal impediment to the granting of the licence (e.g. potential infringement of IP rights held by a Third Party), then such licence is granted to the extent permissible in law.

- 5.3.4 Notwithstanding paragraph 4.3.3, where the University proposes to use course material for activities that do not directly involve the authors, consent must be obtained from the authors for such use. Such consent must not be unreasonably withheld. For an author who is leaving University employment, agreement for on-going use of the employee's material must be negotiated between the University and employee. Such agreement shall not be unreasonably withheld.

Students

- 5.4. In determining ownership of IP created as part of a course of study, it is recognised that students contribute their time and intellectual capability and, usually, make a cash contribution to course fees. Lincoln University contributes intellectual input through study supervisors and also funds much of the facility usage, infrastructure and supervisory and technical time; only part of these contributions is covered by course fees.

Postgraduate and Honours Students

- 5.5. Students, where they are not employees of the University, are the default owners of IP they create during their study at Lincoln University. However, a student will often be involved in a team-based project, work closely with a supervisor or be part of an ongoing research programme. Consequently, a student's contribution to IP created during involvement in a research programme is likely to be a portion of the total. The extent of a student's intellectual property rights (IPR), that is, the legal ownership rights that flow from creation of IP, will therefore depend on the extent and value of their contribution to IP creation and the extent of other intellectual property inputs to the research project concerned.
- 5.6. Shared ownership of IP can complicate and/or severely impede negotiations during efforts to commercialise it, that is, to secure tangible financial or other benefits from its use. Shared ownership can create uncertainty for investors, companies wishing to licence use of IP, joint venture partners and so on because they require certainty about their access to use, sometimes to exclusively use, the IP on which a commercial opportunity is based.
- 5.7. Ownership of IP can be a major issue for an external entity, which contributes all or part of the funding necessary for the execution of a research project. The funding entity will often, and very reasonably, place legally binding obligations on Lincoln as a condition of providing the funding. These may severely or totally limit what the University can provide in the way of IPR to students working on the research project.

5.8. It is clear from the above that where IP created during a research project has commercial potential it is vital that the processes and procedures adopted for managing ownership of IP be sound if that potential is to be realised. Similarly, where a funder of a research project assumes their legal right to own IP created in the project, the University must be sure that it is in a position to ensure that can happen. Clearly, it is also preferable that processes and procedures be as administratively straight forward as is possible. The process adopted by the University to accommodate the above requirements is as follows:

- 5.9. When a Postgraduate or Honours student enrolls at Lincoln, the University requires the student to agree that Lincoln shall, with the exception of copyright in some materials (see para 4.11) own all commercialisable IP created or acquired by the student or the purpose of completing their course of study. Commercialisable IP is defined in section 8 of this policy. In the event that Lincoln and a student disagree whether particular IP falls within this definition, the dispute resolution process set out in section 6 of this policy shall apply.
- 5.10. The University's ownership of a student's commercialisable IP will not in any way prejudice a student's ability to submit a thesis for examination.
- 5.11. The University will make no claim of ownership to a student's copyright in their thesis or dissertation or in any articles or other works they write for publication. Students will own the copyright in these works.
- 5.12. Where IP is successfully commercialised and a student's IP has contributed to that commercialisation, the student will, along with other creators, share in any financial or equity ownership returns. Students will be treated in exactly the same manner as academic staff in this regard. (See the Lincoln University [Policy on Distribution of Revenue from Commercialisation of Intellectual Property](#))
- 5.13. The date in which title in commercialisable intellectual property vests in Lincoln may vary depending on the particular intellectual property in question but shall be at the earliest possible opportunity i.e. at the earlier of:
- The date of creation;
 - The date that Lincoln and the student agree that certain intellectual property is commercialisable; or
 - The date that Lincoln and the student agree that title shall vest, e.g. in a formal deed of assignment (if one is necessary to give title in the intellectual property to Lincoln).
- 5.14. When a research project is funded by a third party and is subject to a contract which limits the University's ability to secure IPR, the student will be required to assign all IP to the funding entity as a condition of involvement.
- 5.15. Where a student initiates a research programme, and (i) the supervisor and/or other participants in the research are not required to make a significant intellectual contribution, (ii) the project does not rely on existing IP owned by the University, and (iii) there is no IP ownership requirement by an external sponsor, the University shall waive its right to own commercialisable IP created by the student in that particular research programme. This waiver shall be communicated to the student in writing by the University.
- 5.16. Enrolment documentation will contain sufficient details of and information related to Lincoln's IP policies to ensure that a student is appropriately informed of the University's policy on ownership of IP.
- 5.17. Lincoln will recommend that a student obtains independent legal advice in relation to its policies on IP ownership and will suggest, in general terms, where such help might be obtained.

Undergraduate Students (other than Honours students)

- 5.18. For undergraduate students other than Honours students, ownership of IP will be considered on a case-by-case basis. Generally, Lincoln will not make a claim for ownership of IP, commercialisable or not, created by undergraduates. However, it

reserves the right to make such a claim when (i) supervisory input by University staff involves a significant contribution to the creative process, (ii) where pre-existing IP owned in whole or part by the University is necessary for the completion of the work or (iii) where significant expense is involved in the provision of materials or some other form of project support. Wherever possible, the University will advise the student of its possible claim of ownership prior to commencement of the work, though this will not always be possible. Where Lincoln claims ownership of IP and the student agrees to Lincoln's ownership, this will be formally recorded through a written and signed agreement.

Supervisory Staff

- 5.19. Academic staff responsible for supervision of postgraduate or undergraduate students involved in creation of IP partly owned by the University will be entitled to share in revenues derived from the IP they create. (See the Lincoln University [Policy on Distribution of Revenue from Commercialisation of Intellectual Property](#)).

Mātauraka Maori

- 5.20. In situations where IP, protected or unprotected, is provided by Māori/iwi persons and communities, ownership of that IP shall be recognised as residing with the person/community that supplied it. The University agrees that Māori/iwi have a right to shared ownership of any IP that is created from Mātauraka Maori, and that such shared ownership will be recognised through written agreement of the respective parties. Further, should any material benefits be pursued through proposed use of IP, then permission for such use will be obtained by and the share of derived benefits agreed, between Māori/iwi and all other involved parties prior to pursuing said use.
- 5.21. Where internally assessed course work owes part or all of its content to material derived from Māori/iwi sources, ownership of that material will remain with the Māori/iwi sources, its ownership will be duly acknowledged and written permission to use that material will be obtained prior to its use.

6. COMMERCIALISABLE INTELLECTUAL PROPERTY

- 6.1. As noted in Section 4, it is Lincoln's intention that financial or other tangible benefits derived from ownership of IP be shared amongst all those who contribute to its creation.
- 6.2. Commercialisation of products and processes is a specialised and, potentially, very expensive exercise. The need for the right decisions at the right time is paramount if financial return is to be maximised. Successful commercialisation requires knowledge, experience, networks and negotiating skills.

- 6.3. Consequently, Lincoln will manage the commercialisation process. It will usually employ the Research Management Office to act in the best interests of all parties.
- 6.4. IP owned or part owned by Lincoln and which may have potential to provide material benefit to the owners of the IP shall not be disclosed to any party outside of the University or its subsidiary companies. This requirement applies to staff and students of the University. Disclosure will be allowed where a University approved non-disclosure (confidentiality) agreement has been signed by both the University and the parties who seek disclosure under confidentiality arrangements.
- 6.5. When commercialisation is to be pursued, to whatever extent, the share of net proceeds from IP will be distributed in the manner described in Lincoln University's Policy on Distribution of Revenue from Commercialisation of Intellectual Property.
- 6.6. Where an external entity contributes to the funding of research or to the commercialisation of research results, be this at the outset of a research programme, during the research programme or during commercialisation, ownership of and shareholding in intellectual property created by parties shall be a matter for case-by-case negotiation between the parties.

Informing the Research Management Office

- 6.7. Staff and students who create commercialisable IP are required to make its existence known to the Director of the Research Management Office or the Deputy Vice Chancellor in writing. This must be done prior to the time when legal protection for the IP is contemplated, and before the IP is disclosed to any external party (see para 5.4), sold or used for profit. Creators are also required to expeditiously execute any document deemed necessary for the University to secure legal rights to the intellectual property and to enable the University to file patent applications.

7. RESOLVING DISPUTES

- 7.1. If a student and Lincoln are not able to agree on any matter arising out of this Intellectual Property Policy, then the parties are to endeavour to resolve the disagreement in accordance with this clause.
- 7.2. The parties will have regard to any applicable pastoral care codes when resolving disputes.
- 7.3. In the event of a disagreement, either party may notify the other party in writing that they wish to commence the resolution process set out in this policy and must give the other party details of the disagreement.
- 7.4. Within 20 days (or such other time as may be agreed) of the notice referred to above being given, the parties must use their best efforts to resolve the disagreement. Those efforts may include the Vice-Chancellor and other Lincoln representatives meeting the student and/or their representatives. The student is encouraged to approach LUSA for guidance in such a situation.
- 7.5. If the parties are not able to negotiate an acceptable solution within 40 days of the notice referred to above being given (or such other time as may be agreed), then the parties must:

- 7.6 Appoint a mediator to assist resolve the disagreement; or
If they are unable to agree on a mediator, request the current chair of LEADR (Lawyers Engaged in Alternative Dispute Resolution) (or their nominee) to appoint a mediator.
- 7.7 The role of the mediator is to assist in negotiating a resolution of the dispute. The mediator will not impose a decision that is binding on a party.
- 7.8 Each of the parties will properly carry out such reasonable steps as may be requested by the mediator.
- 7.9 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer during mediation is to be taken only as an attempt to settle the disagreement. No party may use any information or documents obtained during mediation for any purpose other than in an attempt to settle the disagreement, and shall keep such information and documents confidential.
- 7.10 If the parties are unable to resolve the disagreement by mediation, either party may refer the disagreement to arbitration in Christchurch by a single arbitrator. In the event that the parties are unable to agree on an arbitrator, they may request the current President of the Canterbury District Law Society (or their nominee) to appoint an arbitrator. In either case, the arbitrator may not be a person who has previously acted as a mediator in relation to the disagreement.
- 7.11 The parties agree that the resolution process set out in this clause shall not prevent the filing of court proceedings seeking urgent injunctive relief but shall preclude the filing of all other court proceedings.

8. AMENDMENT OF POLICY

- 8.1. This policy will be reviewed from time to time. It will not be amended without consultation with staff and student representatives.

9. DEFINITIONS

- 9.1. *Commercialisable* IP means intellectual property which has reasonable potential to be sold, licensed or otherwise utilised in return for financial reward or benefit.
- 9.2. *Creator* means any person who provides intellectual input to the creation of intellectual property.
- 9.3. *Staff* means any employee of Lincoln University. If a student (see below) is also a University employee, they are considered as staff with regard to intellectual property developed as a result of employment, and as a student with regard to other intellectual property. Visitors to the University who make substantial use of University resources are considered as staff with respect to any intellectual property arising from such use.

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