

National Academy of Professional Studies (NAPS)

Intellectual Property Policy and Procedure

Related Documents	004 Professional Code of Conduct HR021 Employee Grievance Policy P006 Copyright Policy 014 Scholarship and Research Strategic Plan 003 NAPS Strategic Plan SS001 Student Grievance and Academic Appeals Policy A009 Student Academic Misconduct Policy and Procedure A002 Academic Freedom Policy
HE Framework Standards 2021	2.1 Facilities and Infrastructure 2.2 Diversity and Equity 2.3 Wellbeing and Safety 3.3 Learning Resources and Educational Support 4.1 Research 5.2 Academic and Research Integrity

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1. Policy Rationale

The National Academy of Professional Studies (NAPS) seeks to create an institutional culture that fosters innovation and creativity. It acknowledges the importance of facilitating an academic environment that is committed to the advancement of knowledge. Ownership of Intellectual Property (IP) is an integral component of the research outcomes that are encouraged in this environment.

As a higher education provider, NAPS is involved in the creation, commercialisation and dissemination of IP as well as upholding laws that ensure the protection of ownership of IP. NAPS also recognises student rights to intellectual property generated in the course of their study at NAPS while at the same time enabling NAPS properly to manage intellectual property rights arising through its programs and operations.

The purpose of this policy is to provide staff and students with understanding regarding the rights and responsibilities associated with ownership of IP.

2. Overview and Application

The policy details principles of ownership of intellectual property. This policy applies to students, academic staff and affiliates of NAPS including visiting and honorary appointments.

This policy should be read in conjunction with the NAPS Copyright Policy, the NAPS Professional Code of Conduct.

3. Definitions

Intellectual Property (IP) refers to the ownership rights relating to work created from the intellect. IP is protected by laws such as those associated with copyright, trademarks and confidentiality agreements.

Course of Employment includes work undertaken as outlined in relevant duty statements for particular positions and any other work incidental to employment requirements.

Commercialisation is the use of IP for the purpose of commercial return or benefit.

Moral Rights are associated with the ownership of IP and ensure rights including the right of fair attribution of authorship; the right for work not to be altered and the right of integrity of the material.

Copyright refers to rights expressed in the *Copyright Act 2011* associated with created works including course materials and scholarly publications.

4. Procedure

NAPS Ownership of Intellectual Property

- 4.1 NAPS retains ownership of IP that has been created by staff in the course of their employment at NAPS. This includes unit teaching materials such as course outlines, multimedia resources, manuals and handouts. NAPS will give staff who develop IP a licence to freely use the IP developed by the staff member.

- 4.2 To avoid the possibility of NAPS wrongly claiming IP rights, measures must be taken to ensure that pre-existing IP is dealt with appropriately. Therefore, at the commencement of employment at NAPS, all academic staff must disclose any pre-existing IP or agreements with third parties that may be relevant to their employment at NAPS.
- 4.3 At the completion of a staff member's employment, NAPS has the discretion to give permission for future use of course materials solely for teaching and scholarly purposes, so long as the materials are not used for any commercial gain. In such cases, when materials are used there must be a clear acknowledgement that materials were developed whilst the staff member was employed by NAPS. Moral rights are retained by NAPS.
- 4.4 Any staff member who requires assistance in understanding this policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further advice be required staff should contact the Human Resources Office of NAPS.

Academic Employees' Ownership of Intellectual Property

- 4.5 Any IP developed from research activities by academics in the course of their employment at NAPS remains with the academics unless a royalty and/or income sharing agreement has been agreed to by both parties.

Although employees retain ownership of IP in scholarly works, they must grant a perpetual, royalty-free license to the Academy for the use of this material. NAPS will take measures to identify the author of any work created by academic staff that is used for NAPS' purposes. The author retains moral rights to the material.

- 4.6 NAPS has the right to claim IP ownership where work has been created:
- using NAPS' resources;
 - on the basis of research with NAPS' colleagues;
 - because of specific commissioning by NAPS; or
 - with the support of funding or specific grants obtained by or through NAPS.
- 4.7 In the course of their employment at NAPS, staff must respect any IP rights of third parties. Staff need to sign an agreement on behalf of NAPS if they wish to incorporate external IP into work at NAPS. Staff must abide by copyright guidelines when using material where the copyright is owned by external bodies and/or NAPS.
- 4.8 NAPS employees may publish any scholarly material but must acknowledge that it was created at NAPS. If the material is co-authored, it cannot be published solely by one author. NAPS retains the right to prohibit the use of its name and logo on published work.
- 4.9 Staff must maintain the confidentiality of any material owned by NAPS. In using confidential material owned by NAPS, staff must not make copies nor use it for any purpose other than that for which it was provided.

- 4.10 Commercialisation based on the utilisation of IP is generally seen as a positive outcome for NAPS and its academic reputation. Generally, staff are given the opportunity to share in any financial or other benefit from the commercialisation of IP produced as a result of work completed in the course of their employment at NAPS. Although specific agreements may be used as a basis for deciding on the nature of reward, generally it will be considered that the net proceeds will be shared between NAPS and a staff member on a 50/50 basis.

Affiliates' Ownership of Intellectual Property

- 4.11 Affiliates of NAPS, including Visiting and Honorary appointments, must adhere to ownership of IP guidelines, including confidentiality and other employment obligations, in place for NAPS' academic staff. This includes the need to disclose pre-existing IP and agreements with parties external to NAPS. The rights of IP ownership, including copyright and moral rights, are commensurate with those of NAPS employees.

NAPS will retain ownership of IP in the circumstances outlined for employees in Section 4.5 above. In addition to these conditions, NAPS will also retain ownership of IP if it has been created by an affiliate with use of background IP owned by NAPS.

Students' Ownership of Intellectual Property

Students at NAPS retain ownership of IP created by them. This may include, for example, a jointly co-authored work with a staff member. Also, students have copyright and moral rights for published material arising from their research activities.

- 4.12 Particular circumstances preclude student ownership of IP including:
- the material is used for teaching purposes;
 - a staff member has created the material to which the student contributed as a paid research assistant; or
 - there is a specific agreement in place such as the one between NAPS and a third party.
 - In cases where students agree to be involved in research with staff members or affiliates of the NAPS, students should be made aware of IP ownership conditions and, if necessary, an agreement should be signed before research begins.
- 4.13 Research Higher Degree students will retain both the moral rights and copyright of their thesis. They also have ownership of IP and any publications and commercialisation arising from the thesis unless there is a pre-existing IP arrangement between the candidate and their supervisor(s) and/or a third party. Such arrangements can recognise background IP.

Should such an IP sharing arrangement be agreed to prior to the commencement of a higher degree candidature it must be updated at six-monthly intervals when the candidate lodges their six-monthly report. The relative percentages of ownership can be varied depending upon the respective input of IP by the participants. Such IP agreements will be held by Student Administrative Services and a copy placed in the student's file.

IP agreements should only be signed by the candidate after they have received advice from an independent legal expert in IP. NAPS will pay the cost of the candidate obtaining such advice.

Should any conflict arise between the candidate and supervisor or third party as to the percentage ownership of the IP, then the normal procedure should be followed in seeking a resolution to the issue.

5. Procedures for Promotion and Protection of IP at NAPS

5.1 Identification, Protection and Tracking of IP

- a. NAPS will take steps to identify its IP. IP will include, but not be limited to: copyright material (eg in courses and units; policies, procedures, NAPS website material, promotional material, etc; trade mark, domain name, trade secrets, confidential information, software generated within NAPS; digital library collections; work in progress, etc.
- b. Where registration is required (eg trade mark) NAPS will register and protect its IP
- c. NAPS will periodically audit its IP and also monitor its compliance regarding licences from third parties.

5.2 Valuation of IP

By the end of its first year of operations and with the executive team in place, NAPS Executive in consultation with the Board of Directors/Council will choose the most appropriate method to value its IP assets so that it may be recognised for accounting and insurance purposes. Relevant Australian Accounting Standards include:

- AASB138: Intangible Assets
- AASB136: Impairment of Assets
- Accounting Interpretation 132: Intangible Assets website costs.

International Accounting Standards and Australian Accounting Standards are now aligned, and have very similar requirements.

5.3 Creating and Maintaining an Ethos that Promotes, Protects and Values IP

NAPS management will establish procedures and practices that create and maintain an ethos that promotes, protects and values intellectual property. This will involve, but is not limited to:

- a. ensuring NAPS staff and students are aware of relevant policies and procedures related to IP and have a general legal literacy of the nature and importance of IP protection;
- b. providing appropriate provisions in employment contract, student handbooks and orientation that relate to IP protection
- c. implementing procedures for recording, reviewing and evaluating IP
- d. providing periodic updates to NAPS governing entities in relation to IP protection
- e. acting promptly to both register and protect NAPS IP while also acting to ensure NAPS does not violate the legal rights of others

6. Policy/Procedure Review

NAPS may make changes to this policy and procedures from time to time to improve the effectiveness of its operation. In this regard, any staff member who wishes to make any comments about this Policy may forward their suggestions to their supervisor or the NAPS Registrar.

7. Further Assistance

Staff or students who have questions about any aspects of this policy should consult the relevant Dean, their supervisor.

8. Additional Resources

IP Australia: <https://www.ipaustralia.gov.au/>

