

INTELLECTUAL PROPERTY POLICY AND PROCEDURE

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Policy Lead	Chief Executive Officer/Principal
Approving Authority	Board of Directors
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Relevant legislation or external requirements	National Code of Practice for Providers of Education and Training to Overseas Students 2018 (NC:) Higher Education Standards Framework (Threshold Standards) 2021 (HESFs: 5.2.2, 7.2.2d) Australian Qualifications Framework (AQF) Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act) Education Services for Overseas Students Act 2000 (Cth) (ESOS Act) Education Services for Overseas Students Regulations 2019 (Cth) (ESOS Regulations) Patents Act 1990 Patents Regulations 1991 Trade Marks Act 1995 Trade Marks Regulations 1995 Designs Act 2003 Designs Regulations 2004 Competition and Consumer Act 2010 Copyright Act 1968 Copyright Amendment (Moral Rights) Act 2000
Related ASA Documents	Academic Freedom Policy and Procedure Academic Integrity Policy Academic Misconduct Procedure Benchmarking Policy Benchmarking Procedure Copyright Policy and Procedure Fraud Policy and Procedure Quality Assurance Framework Artificial Intelligence Policy and Procedure Recognition of Prior Learning Policy Recognition of Prior Learning Procedure Scholarly Activity Policy Scholarly Activity Procedure Staff Recruitment and Selection Policy Staff Recruitment and Selection Procedure Staff Code of Conduct Student Code of Conduct Student Grievance Policy Student Grievance Procedure

1. Purpose

The purpose of this policy is to set out the principles that promote and protect the development of Intellectual Property (IP) by the ASA Institute of Higher Education (ASA) staff, students and any third parties, and manage its commercialisation and dissemination when appropriate.

2. Scope

This Policy applies to all ASA staff (whether full-time, part-time, casual or contract) members of ASA's governing bodies and committees, staff and students. ASA seeks to identify and protect the following material:

- course architecture, assessments and ASA-developed learning materials,
- ASA-innovated policy suites, operational and strategic materials,
- human resource materials,
- marketing materials, and
- software,

as generated by staff and students in the course of their studies and employment at ASA.

3. Principles

ASA values the creation of intellectual property as a means of demonstrating the impact and relevance of ASA's research and teaching, promoting opportunities for collaboration and providing ASA researchers with freedom to operate.

ASA will provide processes to safeguard its intellectual property and ensure it complies with Australian law and international agreements applying to Australia.

- Intellectual property entails both rights and responsibilities.
- The *Intellectual Property Policy and Procedure* reflects the law relating to intellectual property at the time this Policy is published. Changes in the law arising after this Policy comes into effect will prevail over this Policy. Any content within this Policy that deals with the laws relating to intellectual property are not intended to be relied on as legal advice by any person.

This Policy covers intellectual property rights in relation to Copyright of literary works, artistic works, video clips, sound recordings, published editions of works, content on ASA's Learning Management System and computer programs.

ASA shall have procedures in place to handle the protection of staff and student rights in partnerships, and the commercialisation of intellectual property. The decision to commercialise IP shall only be approved if it aligns with the mission, values, and key operations of ASA.

4. Definitions

Term	Definition
academic scholarly activity	Activities concerned with gaining new or improved understanding, or appreciation and insights into a field of knowledge, or engaging with and keeping up to date with advances in the field. Scholarship is based on the Boyer Framework that includes four main interrelated categories of scholarship.
Chief Executive Officer/Principal (CEO)	The Chief Executive Officer is the highest organisational role for ASA and performs the role of Principal as well as their other duties.
creator	Creators means any member of staff, students, honorary appointees, or visitors who create any Intellectual Property whether or not in conjunction with other persons. The term Creators includes those entitled to be named as inventors for the purpose of patent applications and authors for the purpose of copyright law.

Term	Definition
commercialisation	Means the process of developing applying science, technology, research or an invention into a product, service or process which may also include the exploitation of, or dealing in, Intellectual Property, for the purpose of generating a commercial return or benefit.
education material	Means all materials produced by staff or contractors, in the course of, or for use in, teaching at ASA (for example, lecture notes and material, syllabi, handouts, study guides, course software and assessment materials) regardless of format (for example, printed, digital, electronic, multi-media presentations and web content), but excludes personal lecture notes that are not made available to students. To the extent a work may be both education materials and Scholarly Work, it will be treated in this Policy as education materials.
Intellectual Property (IP)	Intellectual property refers to any intellectual creation, such as literary works, artistic works, inventions, designs, symbols, names, images, computer code, etc. Intellectual property law exists in order to protect the creators and covers areas of copyright, trademark law, and patents. Any and all industrial and intellectual property rights (whether or not registered or registrable or having to undergo any other process for grant, registration or the like) includes rights in respect to the below examples: a. development of new teaching and assessment learning materials, course development and architecture, in the course of their employment with ASA; b. literary, artistic, musical and dramatic works in which copyright subsists (including future copyright); c. field and laboratory notebooks; d. cinematographic and multimedia works in which copyright subsists (including future copyright); e. performances of performing artists, sound recordings and broadcasts; f. circuit layouts and the like; g. registered and unregistered trademarks, trademark applications, service marks and commercial names and designations; h. databases, computer software and related material not otherwise coming within any of the other designated items of IP; i. confidential information, trade secrets and know-how and other proprietary information associated with any of the other designated items of intellectual property; and j. any other intellectual property rights as defined in Article 2 of the Convention (Dated 14th July 1967) establishing the World Intellectual Property Organisation (as amended from time to time).
indigenous cultural and intellectual property rights	Means Indigenous peoples' rights to their heritage, consisting of intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural identity, including as reflected in article 31 of the United Nations Declaration of the Rights of Indigenous Peoples.
moral rights	The meaning as set out in the <i>Copyright Act 1968 (Cth)</i> .
originator	Means the author, composer, designer, programmer, or any other person who creates in any way IP which is the subject of this Policy.
pre-existing IP	Means IP, other than Teaching Materials, created prior to, or independently of, a particular ASA research project or course of study.
scholarly works	Means copyright works that are intended for academic publication (for example, any article, book, manuscript, or manual) and have been peer reviewed, regardless of format (for example, printed, digital or electronic versions) created by staff or visitors, but excludes education materials.

Term	Definition
teaching materials	Refers to materials developed in order to present subjects (units of study) and courses to students or staff at ASA including lecture and tutorial notes, slides, websites, and other documentation supporting learning.

5. Policy Statements

5.1 Ownership

5.1.1 Staff

ASA owns intellectual property created by staff members in the course of their employment with ASA, in both written and electronic form as outlined in the *Copyright Act 1968*, except as otherwise agreed in writing between the staff member and Academic Dean and CEO.

Staff must assign to ASA all IP that is created by academic, professional, technical, or administrative staff in the course of their employment by ASA. Created in the course of their employment means the generation, creation, or realisation of any act, work, research, or idea by reason of:

- a. the use of ASA's resources; or
- b. participation in any project or program supported by funding obtained or provided by ASA.

ASA does not assert ownership over the IP in Scholarly or Creative Works unless:

- a. the originator has been engaged specifically by ASA to create such work; or
- b. the relevant work is subject to an overriding contractual obligation between ASA and a third party; or
- c. the relevant work relates to IP which is being commercialised.

The provisions of this Policy are deemed to be part of the terms and conditions of employment of all staff. In the case of sessional staff who are engaged as consultants, this provision will form part of the contractual arrangements with those staff.

ASA and staff members will execute, in a timely manner, all assignments of intellectual property necessary to give effect to the ownership provisions set out in this Policy and to allow for the use and commercialisation of the intellectual property by ASA as set out in this Policy.

ASA acknowledges its obligation and responsibility to ensure all staff are aware of the rights and obligations relating to intellectual property, moral rights and the application of this Policy.

5.1.2 Students

Students own IP created in the course of their studies, except when a student elects to participate in a project that:

- a. builds upon pre-existing ASA IP; or
- b. is being carried out for, or in conjunction with an external third party, whether under a separate formal agreement or not.

However, where extensive use is made of ASA's facilities and/or background intellectual property, ASA may seek shared ownership of intellectual property with a student. Any sharing of ownership of intellectual property would involve an agreement which assigns a student's ownership rights to ASA. Any reference in this Policy to ASA having rights to the intellectual property of students is understood to be only in the circumstance of the students assigning ownership rights to ASA by written agreement.

ASA retains the right to use student work for educational and/or promotional purposes through appropriate agreements with the student.

5.1.3 Scholarly Works

ASA does not assert ownership of IP in scholarly works created by staff or visitors, except where the work is specifically commissioned by ASA through a separate agreement (for example, outside the scope of an employment contract), or produced with the assistance of ASA's resources. Creators of scholarly works grant to ASA a perpetual, world-wide, fee free, royalty free, unrestricted, non-exclusive licence (including the right to sub-licence) to use such works for the ASA's teaching and educational purposes. This licence is subject to any overriding contractual obligations the creator owes to third parties (for example, a publisher of a textbook or journal article).

6. Procedures

6.1 Moral Rights

ASA recognises the moral rights of the creators of works in which copyright subsists in accordance with the Copyright Act 1968 (Cth). ASA will take all reasonable steps to respect the right of an originator to be acknowledged as the creator of intellectual property, and to ensure that others respect that right.

Where ASA uses intellectual property created by an originator it must take reasonable steps to consult with the originator before modifying or adapting that intellectual property. Where an originator wishes not to be acknowledged as the creator of intellectual property which has been modified or adapted, ASA will take reasonable steps to respect that wish, and to ensure that others respect it. An originator must take reasonable steps to ensure due acknowledgment of ASA's contribution of facilities and resources used in the creation of intellectual property in any subsequent use of it that they may make.

6.2 Education Materials

ASA does not assert ownership of IP in education materials generated by staff or any third party except where the work is specifically commissioned by ASA through a separate agreement (for example, outside the scope of an employment contract), or produced as part of fulfilment of their engagement with ASA, or with the assistance of ASA's resources.

A creator of education materials grants to ASA a perpetual, world-wide, fee free, royalty free, unrestricted, non-exclusive licence (including the right to sub-licence) to use such works generated by that creator for the ASA's teaching and educational purposes. This licence is subject to any overriding contractual obligations the creator owes to third parties (for example, a publisher of a textbook or a journal article).

6.3 Indigenous Cultural and Intellectual Property

ASA recognises and will protect indigenous cultural and intellectual property rights. ASA, staff members, students, and third parties working with ASA, must not claim ownership over Indigenous knowledge. Where the creation of IP involves knowledge of Indigenous peoples all reasonable steps must be taken to consult with the relevant Indigenous groups and peoples to ensure that ASA conforms with all protocols¹ and ethical guidelines.

6.4 Pre-existing Intellectual Property Ownership

Any staff or visitor must inform ASA of any background intellectual property they wish to use in any project or activity prior to the commencement of that activity. The staff or visitor must not

¹ *Aboriginal Cultural and Intellectual Property Protocol*

use background intellectual property owned by themselves or third parties, in work related to ASA until there is a written agreement in place regarding ASA's rights in respect of that background intellectual property.

6.5 Commercialisation

ASA IP can be commercialised or used in various ways that will benefit ASA, the originator, and the community, depending on the nature of the IP and its potential application.

The CEO shall ascertain if there is a potential benefit for IP generated at ASA to be commercialised, taking into account the:

- Benefit of the IP to the community
- Benefit of commercialisation to ASA
- Protection of the rights of the IP owner, including possible royalties to be paid
- The costs associated with commercialisation.

ASA shall bear the costs associated with commercialisation of IP generated by ASA. The costs of commercialisation of IP generated in collaboration with external partners shall be negotiated with the relevant partner and documented in contract.

If ASA commercialises any IP it owns, it will distribute a share of net commercialisation revenues to creators that have a recognised interest in the IP that has earned that revenue. Net commercialisation revenues will be distributed in the following manner:

- 50% to be shared among all the creators (staff members, and/or students)
- 50% to ASA for its general purposes, with the expectation that it will be used to foster research and academic scholarly activity.

6.6 Dispute Resolution

The resolution of disagreements and disputes of matters related to this Policy shall be dealt with under ASA's *Staff Code of Conduct* or the *Student Grievance Policy* and associated procedure for students.

6.7 Roles and Responsibilities

6.7.1 Chief Executive Officer (CEO)

The CEO will oversee and monitor implementation of the *Intellectual Property Policy*. ASA is responsible for protecting intellectual property owned by it. The CEO will work with the Academic Dean regarding any potential commercialisation of intellectual property.

On approval of the CEO, or delegate (being the Academic Dean), ASA may enter into an agreement with any person in relation to the creation, ownership, licensing, use or commercial exploitation of intellectual property. Such an agreement prevails over any provision of this policy and procedure, which is inconsistent with the agreement and intellectual property will be owned in accordance with the agreement.

6.7.2 Academic Dean

The Academic Dean will:

- a. receive written notifications from a staff member whose research or academic scholarly activities as an employee of ASA, undertaken using ASA's resources, leads to an intellectual property outcome that might reasonably be regarded as being of potential commercial value; and

- b. advise the staff member promptly whether ASA wishes to become involved in the process of commercial exploitation of the intellectual property.

6.7.3 Academic Staff and Students

Academic staff will notify the Academic Dean in writing of any intellectual property outcome, arising from their research or academic scholarly activities undertaken as an employee of ASA or using ASA's resources, that might reasonably be regarded as being of potential commercial value prior to any publication, dissemination or commercialisation of the intellectual property.

ASA will negotiate with a staff member or student who creates any intellectual property that has any potential for commercial exploitation the apportionment of any net profit or other share derived from any commercial exploitation of the intellectual property. This section does not place any obligation on ASA to commercially exploit the intellectual property, which ASA may or may not deal with in its absolute discretion.

A staff member or student must, if required by the CEO or Academic Dean, execute any document or do anything reasonably required by ASA in relation to intellectual property created by the staff member or student in accordance to demonstrate, prove or assign intellectual property ownership to any person or secure intellectual property protection.

7. Relevant HESFs

This Policy and the associated Procedure comply with Higher Education Standards Framework (2021) which specifies that:

Standard 5.2 Academic and Research Integrity [...]

2. Preventative action is taken to mitigate foreseeable risks to academic and research integrity including misrepresentation, fabrication, cheating, plagiarism and misuse of intellectual property, and to prevent recurrences of breaches.

Standard 7.2 Information for Prospective and Current Students [...]

2. Information for students is available prior to acceptance of an offer, written in plain English where practicable, accompanied by an explanation of any technical or specialised terms, and includes: [...]
 - d. information to give access to current academic governance policies and requirements including admission, recognition of prior learning, transition, progression, assessment, grading, completion, qualifications, appeals, academic integrity, equity and diversity, intellectual property and withdrawal from or cancellation of enrolment

8. Version Control

This Policy has been reviewed and approved by the ASA Board of Directors as at April 2024 and is reviewed every three years.

The Policy, with associated Procedure, are published and available on the ASA website <https://www.asahe.edu.au/policies-and-forms/>.

Change and Version Control				
Version	Authored by	Brief Description of the changes	Date Approved:	Effective Date:
2024.2	Quality and Policy Officer	Document formatting updated to reflect change of Trading Name to ASA Institute of Higher Education.	28/06/2024 by CEO	01/07/2024
2024.1	Director Learning and Innovation	Updated policy to include HESF references, changes in regulatory compliances. Benchmarked against 11 other Higher Education Providers.	26/04/2024	08/05/2024
Previous version archived. New Policy code and numbering system implemented.				
2.1		Academic Board approval	04/11/2020	