

Intellectual Property Regulations

This Regulation should be read in conjunction with Intellectual Property (Statute No. 18)

1. Introduction and Application

- 1.1. The purposes of these Regulations are to:
 - 1.1.1. specify the respective rights and obligations of each of Murdoch, Employees and Students in relation to Intellectual Property owned by, or created or developed at, Murdoch;
 - 1.1.2. specify procedures for identifying, protecting and commercially exploiting the Intellectual Property referred to in regulation 1.1.1; and
 - 1.1.3. establish a mechanism by which Murdoch will provide equitable returns to Contributors involved in the creation or development of Intellectual Property that is exploited by Murdoch for commercial return.
- 1.2. It is a condition of every Employee's employment contract and every Student's enrolment that the Employee or the Student, as the case may be, agrees to be bound by these Regulations.
- 1.3. If there is any inconsistency between these Regulations and a written agreement between Murdoch and either an Employee or a Student, or both, the terms of the written agreement will take precedence over these Regulations.
- 1.4. Employees and Students must:
 - 1.4.1. respect and not breach any third party's Intellectual Property rights (in particular, but not exclusively, copyright); and
 - 1.4.2. comply with any policies, regulations or similar that Murdoch has in place from time to time in respect of the use of a third party's Intellectual Property.

2. Dictionary and Interpretation

- 2.1. Except to the extent that they are expressly excluded or modified, the provisions of *Statute No. 8 – Interpretation* apply to these Regulations.
- 2.2. Words appearing in italics in these Regulations are defined terms and have the meanings detailed in column two of the Dictionary (see the schedule).
- 2.3. Headings are inserted for convenience only and do not affect the interpretation of these Regulations.
- 2.4. A reference to any legislation, statute, ordinance, code, act or other law includes regulations or other instruments under it and consolidations, amendments, re enactments or replacements of them.
- 2.5. Where an expression is defined in these Regulations, another part of speech or grammatical form of that expression will have a corresponding meaning.

- 2.6. If, in these Regulations, an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- 2.7. All amounts and payments referred to in these Regulations are inclusive of GST and all other taxes, duties, charges and levies payable in respect of them.

3. Ownership of Employee Related Intellectual Property

- 3.1. Subject to regulation 3.2, Murdoch owns all Intellectual Property created by its Employees:
 - 3.1.1. in the course and scope of that Employee's employment with Murdoch; or
 - 3.1.2. using Murdoch resources, facilities or apparatus, including all course materials and teaching materials so produced.
- 3.2. Murdoch will not own copyright in an Employee's Conventional Scholarly Output, except where Murdoch has commissioned the relevant publication.
- 3.3. Murdoch is granted a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right of sub licence) to use copyright material in an Employee's Conventional Scholarly Output for its teaching and research purposes, where that Conventional Scholarly Output was produced in the course or as part of that Employee's duties of employment.
- 3.4. An Employee who is the author of course materials or teaching materials may request that Murdoch transfer copyright in such materials to that Employee.
- 3.5. An application under regulation 3.4 must be in writing addressed to Murdoch's Vice Chancellor, and submitted through the respective Employee's School Dean or Director.
- 3.6. Murdoch has an absolute discretion whether or not to accede to a request under regulation 3.4 and if so on what terms. Subject to any agreement to the contrary, any such transfer will be subject to Murdoch retaining a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right of sub-licence) to use the material for any purpose.

4. Ownership of Student Related Intellectual Property

- 4.1. Subject to the following provisions of this regulation 4, Students own their respective Student IP.
- 4.2. Each Student grants Murdoch a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right of sub-licence) to use his or her Student IP for Murdoch's teaching and research purposes.
- 4.3. Murdoch owns Student IP where:
 - 4.3.1. the Student created or developed that Student IP in circumstances where the Student's use of or reliance on any one or more of Murdoch's resources and services was materially beyond that which Murdoch ordinarily provides to its Students;
 - 4.3.2. that Student IP forms part or will form part of a set of Intellectual Property generated by a team of which the Student is or will be directly or indirectly a member and which is considered by Murdoch to be property that should be managed by Murdoch in the best interests of the team as well as Murdoch;

- 4.3.3. if Murdoch is of, or forms, the reasonable opinion that the nature of that Student IP is such that ownership by Murdoch is or would be the best means of protecting the integrity of Murdoch;
- 4.3.4. Murdoch reasonably requires control of that Student IP to ensure that research and teaching programmes and other activities are conducted in the best interests of Murdoch and its Students.
- 4.4. Where regulation 4.3 applies to Student IP, Murdoch:
 - 4.4.1. has an absolute discretion whether to assert ownership of the relevant Student IP or to assert some lesser interest, for example a licence, and may, at its absolute discretion, agree to assign or licence that Student IP to the relevant Student;
 - 4.4.2. may require the Student to sign a written acknowledgement confirming the effect of regulation 4.3;
 - 4.4.3. will, to the extent that it commercialises that Student IP, provide the same rights and entitlements to the Student that an Employee would have pursuant to regulation 9; and
 - 4.4.4. will ensure that the Student suffers no prejudice in the assessment of that Student's academic performance as a consequence.
- 4.5. If Murdoch invites or requests a Student to participate in work conducted, or to be conducted, under an agreement between Murdoch and a Third Party, Intellectual Property generated by that Student as part of the Student's participation in that work will be owned in accordance with that agreement. Murdoch may (at Murdoch's cost) require the Student to sign all necessary documents to give effect to this regulation 4.5.

5. Notification

- 5.1. Employees and Students must obtain written authorisation in accordance with regulation 5.2 before:
 - 5.1.1. dealing with Third Parties on Murdoch's behalf; or
 - 5.1.2. using Murdoch IP,
 where such dealing or use will or is likely to involve any one or more of the use, creation, sharing, development or exploitation of Murdoch IP by or with any Third Party.
- 5.2. A request for authorisation will be in writing, made prior to the dealing or use, and made to the following person:
 - 5.2.1. if the Murdoch IP is copyright in software produced by a General Staff Employee, the Director IT Services;
 - 5.2.2. if the Murdoch IP is copyright in course materials or teaching materials, the Provost;
 - 5.2.3. if the Murdoch IP was created as part of or arose from the conduct of research and is not covered by regulation 5.2.1 or 5.2.2, the Director Division of Research and Development; and
 - 5.2.4. in all other cases, the Employee or Student's divisional head.

6. Moral Rights to Copyright Materials

- 6.1. Murdoch will not infringe any Moral Rights of Employees or Students in copyright materials.

7. Identifying, Protecting and Commercialising Intellectual Property

- 7.1. Contributors to Registrable IP or otherwise significant Intellectual Property (excluding any course materials or teaching materials), which pursuant to these Regulations is owned by Murdoch, must notify the Director Division of Research and Development as soon as possible after the creation of that Intellectual Property. Where a Contributor is uncertain whether or not Murdoch owns the Intellectual Property, he or she must assume that Murdoch does own the Intellectual Property and notify in accordance with this Regulation.
- 7.2. A notice under regulation 7.1 must provide all information relevant to that Intellectual Property, including:
 - 7.2.1. the nature of the Intellectual Property created;
 - 7.2.2. the circumstances in which it was created or devised, including whether it was created under a grant of funds;
 - 7.2.3. the names of all Employees, Students and any Third Parties involved; and
 - 7.2.4. the use of any pre-existing or independently created Intellectual Property.
- 7.3. A Contributor to Murdoch IP must not act contrary to Murdoch's rights in relation to that Intellectual Property or in a manner that could harm or prejudice Murdoch's ability to commercially exploit that Intellectual Property.
- 7.4. Subject to regulation 7.6, an Employee or Student must not, without first obtaining approval in accordance with regulation 5.2, disclose information relating to Murdoch IP to any Third Party (including by way of academic publication) where:
 - 7.4.1. such disclosure would be contrary to a contractual obligation that Murdoch owes to any other Third Party of which the Employee or Student has been made aware or should reasonably be aware; or
 - 7.4.2. the Murdoch IP could be commercially exploited.
- 7.5. If an Employee or Student is in any doubt over whether Murdoch IP could be commercially exploited, he or she must treat it as being capable of commercial exploitation until the Employee or Student obtains advice to the contrary from the appropriate person noted in regulation 5.2.
- 7.6. Regulation 7.4 will not prevent any disclosure that is required to be made under an existing contractual obligation of Murdoch, provided that such disclosure is limited to, and made in accordance with, such contractual obligation.
- 7.7. The Division of Research and Development will be responsible for coordinating all applications for, and maintenance of, statutory protection for Murdoch IP.
- 7.8. Each and every person involved in creating Intellectual Property at or by Murdoch must, at Murdoch's request and at its cost and in a timely fashion, execute all such documents and do all such other acts or things as may be necessary or desirable in order to enable Murdoch to properly and efficiently protect and commercially exploit its Intellectual Property and to give full effect to these Regulations.

8. Assignment of Murdoch IP

- 8.1. A Contributor to Murdoch IP may request that ownership of the relevant Intellectual Property be assigned to him or her.
- 8.2. An application under regulation 8.1 must be in writing addressed to Murdoch's Vice Chancellor, and submitted through the Director Division of Research and Development.
- 8.3. Murdoch has an absolute discretion whether or not to accede to a request under regulation 8.1 and if so on what terms. Subject to any agreement to the contrary, any such transfer will be subject to Murdoch retaining a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right of sub-licence) to use the Intellectual Property for such purposes as Murdoch requires.

9. Distribution of Revenues Derived From Intellectual Property

- 9.1. For the purpose of regulation 9, "Murdoch IP" does not include course materials or teaching materials, and Murdoch will not be obliged to share any revenues that may be obtained from the commercial exploitation of such materials.
- 9.2. Contributor(s) to Murdoch IP will receive a share of Net Revenues that Murdoch obtains from its commercial exploitation of that Murdoch IP on the following basis:
 - 9.2.1. Murdoch 50% of Net Revenue
 - 9.2.2. Contributor(s) 50% of Net Revenue
- 9.3. Within 90 days after the end of a Financial Year, Murdoch will calculate the Gross Revenue, Costs and Overhead Charge in respect of each component of Murdoch IP:
 - 9.3.1. that was commercially exploited in that Financial Year; and
 - 9.3.2. in respect of which Contributor(s) would be entitled to a share of Net Revenues pursuant to regulation 9.2).

Where the Gross Revenue or Costs relate, in whole or in part, to more than one component of Murdoch IP (regardless of whether that Murdoch IP is of a type described in regulation 9.3.2), Murdoch will allocate the Gross Revenue or Costs, as the case may be, amongst the different components of Murdoch IP on a reasonable estimate basis.

- 9.4. Within 30 days after completing the calculation referred to in regulation 9.3 in respect of particular Murdoch IP, Murdoch will notify the Contributor(s) to that Murdoch IP, advising of the relevant calculation and seeking instructions as to disbursement of the Contributor(s)' share of the Net Revenue. Murdoch may defer payment to a Contributor due to Murdoch's reasonably anticipated future Costs or cash flow requirements relating to the ongoing commercial exploitation of the relevant Murdoch IP.
- 9.5. Subject to regulation 9.6, where there is more than one Contributor to the Murdoch IP being commercialised, those Contributors will agree between themselves as to how to share the Net Revenue payable to Contributors under this regulation 9, and provide written notice of that agreement, signed by all Contributors, to the Director Division of Research and Development as soon as reasonably practical after reaching such agreement.
- 9.6. If the Contributors fail to provide notice as contemplated by regulation 9.5 within 60 days of the date of a request from the Director Division of Research and Development, the Contributors will be deemed to agree to share the Net Revenue in equal shares.

- 9.7. Any delay in the Contributors agreeing as to their respective shares of the Net Revenue will not delay Murdoch taking action to commercially exploit the relevant Intellectual Property.

10. Dispute Resolution

- 10.1. Subject to the following provisions of this regulation 10, if a dispute arises out of or in connection with the operation of these Regulations, any party to the dispute may refer it to a mediator agreed by both parties, or failing agreement within 21 days, by a mediator appointed by the President of the Law Society of Western Australia.
- 10.2. Subject to any agreement to the contrary, all mediations commenced under these Regulations are subject to the following provisions:
- 10.2.1. The parties to the dispute will share the cost of the mediator equally.
- 10.2.2. Referral to mediation is a precondition to any party commencing legal proceedings in respect of the dispute, except for legal proceedings referred to in regulation 10.3.
- 10.2.3. If the dispute is not successfully mediated after 30 days then either party to the dispute may commence proceedings in a court of competent jurisdiction.
- 10.3. Any party to a dispute may seek urgent injunctive or other equitable relief without recourse to the dispute resolution procedure set out in regulation 10.1.

Schedule (Dictionary)

Column 1 (defined term)

Column 2 (meaning)

"Accrued Costs"

Any costs and their associated Overhead Charges that are not recovered by way of Gross Revenue in any Financial Year and that are carried over to the next and subsequent Financial Years.

"Contributor"

Either an Employee, or a Student, or both, whose authorship of, or contribution to the development of, Intellectual Property, if it were done:

- (a) in his or her private capacity; and
- (b) in the absence of any express or implied contractual arrangement to the contrary between that Employee or Student and any one of more of:
 - (i) Murdoch;
 - (ii) A Related Entity; or
 - (iii) Another party,

would entitle that Employee, or a Student, or both, to own, in whole or in part, that Intellectual Property.

"Conventional Scholarly Output"

Academic publications produced by an Employee for the purpose of publication in academic books, journals or conference papers (whether hard copy or electronic). For the avoidance of doubt, the

	expression "Conventional Scholarly Output" does not include course materials or teaching materials.
"Costs"	<p>All costs, charges and expenses incurred or paid by Murdoch in a Financial Year relating to the creation, development, protection or commercial exploitation of Murdoch IP, including costs, charges and expenses:</p> <ul style="list-style-type: none"> (a) associated with acquiring and maintaining statutory protection for the Murdoch IP; (b) base costs of undertaking further development of the Murdoch IP; (c) of licensing Murdoch IP; (d) of marketing, production, distribution, product testing, advertising and sale; (e) of obtaining advice relating to commercial exploitation; and (f) of obtaining licences or assignment of Intellectual Property owned by a Third Party to be used as part of the commercial exploitation.
"Employee"	Any person employed by Murdoch in a full, part time or casual capacity, regardless of the permanency of the position. For the purposes of these Regulations and for the avoidance of doubt, the expression "Employee" includes a Student who is employed by Murdoch.
"Financial Year"	The accounting period that Murdoch adopts from time to time for its accounting and financial reporting requirements.
"Gross Revenue"	<p>All income, including royalties, assignment fees, etc that Murdoch derives or receives, and retains, in a Financial Year resulting from the commercial exploitation of Murdoch IP. For the avoidance of doubt, "Gross Revenue" does not include amounts received:</p> <ul style="list-style-type: none"> (a) for conducting research (including research grants); (b) for creating or developing the Intellectual Property in question; or (c) pursuant to a consultancy (whether a research consultancy or otherwise) conducted by a Contributor on behalf of Murdoch.
"Intellectual Property"	<p>The results of creative effort protected by law, including rights relating to:</p> <ul style="list-style-type: none"> (a) inventions (including patent rights); (b) information which is of a kind and which has been communicated in such a way as to give rise to a duty of confidentiality;

	<ul style="list-style-type: none"> (c) information which is subject to an Employee's duty of fidelity to his or her employer; (d) trade secrets; (e) copyright; (f) trademarks, whether registered or un-registered; (g) registered designs and designs capable of being registered; (h) plant varieties and the rights of breeders of such varieties; (i) circuit layouts; and (j) other rights resulting from intellectual activity in the industrial, commercial, scientific, literary and artistic fields.
"Moral Rights"	Has the same meaning that it has under the <i>Copyright Act 1968 (Cth)</i> .
"Murdoch"	Murdoch University.
"Murdoch IP"	Subject to regulation 9.1, Intellectual Property that Murdoch owns, either in whole or in part, and whether by virtue of these Regulations or otherwise.
"Net Revenue"	The balance remaining in a Financial Year after deducting the Accrued Costs, the Costs and the associated Overhead Charge in relation to particular Murdoch IP from the Gross Revenue for that Murdoch IP.
"Overhead Charge"	15% of the total Costs in a Financial Year, as and by way of a contribution in respect of overheads.
"Registrable IP"	Intellectual Property that is potentially patentable or registrable under relevant legislation, and by registration or patenting provides monopoly rights to the registrant, such as patentable inventions, designs, trademarks, plant varieties and circuit layouts.
"Regulations"	These regulations.
"Related Entity"	Any company: <ul style="list-style-type: none"> (a) in which Murdoch holds a majority of shares; or (b) is a subsidiary of or is controlled by a company in which Murdoch holds a majority of shares.
"Student"	Has the same meaning that it has under the <i>Murdoch University Act 1973 (WA)</i> .
"Student IP"	Intellectual Property that a Student creates in the course of his or her studies, scholarship or research at Murdoch.
"Third Party"	A party other than Murdoch, an Employee or a Student.

Related Documents:[Statute No. 8 - Interpretation](#)[Statute No. 18 - Intellectual Property](#)**Revision History:**

Version	Date Approved	Effective Date (if later than 'Date Approved')	Next Review Date	Resolution No. (if applicable)
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Approval and Implementation:

Approval Authority:	Senate
Responsible Officer(s):	University Secretary

Note: All enquiries relating to Legislation should be referred to the University Secretary's Office.