

# INTELLECTUAL PROPERTY POLICY

**Policy Code:** IPP-001

**Version:** 1.0

**Effective Date:** 2nd April 2018

## PURPOSE

The objectives of this Policy are to:

- (a) create an innovative College culture which fosters the creation of Intellectual Property and provides a framework for considering the commercial potential of such Intellectual Property (IP);
- (b) protect the interests of A.C.O.A.E. RTO and its members, and to provide clear guidelines with respect to IP concerning the rights and responsibilities of Staff, Visitors and Students;
- (c) provide guidance on managing Intellectual property whether it be within the College or between the College and another institution, individual or funding body;
- (d) provide guidance on the circumstances in which the College will waive its rights to its Intellectual Property, or share the benefits of the ownership of its Intellectual Property with Staff, Students and other persons;
- (e) outline a general framework for the distribution of any net revenue arising from the Commercialisation of Intellectual Property, and
- (f) allow the College to comply with National Principles of Intellectual Property Management for the *Australian Code for the Responsible Conduct of Research*, and other public policies and or legislation that may apply to the College's Intellectual Property and its management.

## SCOPE

This policy applies to all Staff of the College and to all Students. The policy also applies to addition staff, consultants, Visitors and other persons generating Intellectual Property in collaboration with College Staff or Students or engaged by the College to undertake specific activities.

This Policy is incorporated by reference in the provisions of the contract of employment of Staff, in the conditions of enrolment of Students, in letters of appointment of Visitors and in service contracts with consultants and other persons contracting with the College from time to time.

Provisions of any relevant laws or statutes take precedence over the provisions of this policy. Relevant statutes (and any amendments) pertaining to this policy include, but are not limited to, those in the:

- (a) Patents Act, 1990;
- (b) Copyright Act, 1968;
- (c) Trade Marks Act, 1995;
- (d) Competition and Consumer Act 2010.

## APPLICATION

In promoting, protecting, managing and commercialising its Intellectual Property, A.C.O.A.E. does so for the benefit of the College, including its Staff and Students; and for the benefit of the wider community.

## DEFINITIONS

Item	Definition
<b>Commercialise or Commercialisation</b>	in relation to Intellectual Property, the exercise of all the rights granted to the holder of such rights by the laws of the jurisdiction in which the Intellectual Property right subsists, including the right to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise, market, lease, dispose of or otherwise utilise or exploit Intellectual Property for the purpose of generating financial or other commercial gains.
<b>Commercialisation Costs</b>	all costs and disbursements incurred by the College in connection with the Commercialisation of the Intellectual Property owned or assigned to the College. This includes the cost of managing, registering, protecting and enforcing Intellectual Property rights, creation of prototypes, research and development, proofs of concept, insurance, legal and financial advice, marketing, travel and all such expenses.
<b>Confidential Information</b>	information which is commercially sensitive or, by its subject matter or nature, confidential. It includes all the research and scientific information that is being considered for Commercialisation or has already been Commercialised but does not include information that is known to the public.
<b>Gross Commercialisation Revenue</b>	the gross revenue actually received and retained by the College from the Commercialisation of Intellectual Property owned or assigned to the College, after the payment of any taxes, fees and other charges. Gross Commercial Revenue does not include income received from the provision of research, consultancy or other services.
<b>College or A.C.O.A.E. RTO</b>	Refers to A.C.O.A.E. RTO ABN 79 617 581 834

Item	Definition
<b>College Resources</b>	means resources of the College which includes, without limitation, facilities, funds, services, equipment, paid leave, Staff time and support Staff
<b>Intellectual Property</b>	<p>For purposes of this policy, Intellectual Property refers to knowledge, creative ideas, or other expressions of the human mind that have commercial value and which are protectable under copyright, patent, trademark, or other relevant laws from imitation, infringement, and dilution. Intellectual property means all statutory and other proprietary rights in respect of, without limitation, ideas, concepts, theories, discoveries, formulas, inventions, designs, software, brand names, confidential information, plant breeder's rights, circuit layouts, know-how, trade secrets, works of an artistic, literary, or musical nature and all other rights as defined by Article 2 of the Convention Establishing the World Intellectual Property Organisation, July 1967.</p> <p>In the context of A.C.O.A.E. RTO, IP includes but is not limited to:</p> <ul style="list-style-type: none"> <li>(a) <b>Course and educational materials</b>, including any materials used in, or in connection with, the provision of lectures, tutorials, seminars, workshops, field classes, on-line courses and units, assessments, practicum and other teaching activities conducted by the College. Without limitation, such materials may include slides, photographs, maps, diagrams, books and handbooks, manuals, teaching aids, course outlines, exercises, computer programs and multimedia works that serve a teaching and/or learning function.</li> <li>(b) <b>Creative works</b> including any processes, products or materials used in, or in connection with, rehearsals, performances, exhibitions, displays, shows and events of an artistic kind. Without limitation, such processes, products or materials may include literary works, dramatic works, musical works, dance works, costumes, stage designs and materials, films, sound recordings, broadcasts, written programs, and performance technologies.</li> </ul>

Item	Definition
<b>Net Commercialisation Revenue</b>	<p>is the monetary amount retained by the College from the Gross Commercialisation Revenue received after Commercialisation of Intellectual Property after:</p> <p>(a) a total Commercialisation Costs have been recovered or deducted from Gross Commercialisation Revenue; and</p> <p>(b) the legitimate claims of third parties are satisfied.</p>
<b>Staff</b>	<p>means the part-time and full-time trainers, and employees of the College, including all officers or employees that carry out academic, professional, technical or administrative work.</p>
<b>Student</b>	<p>means any student enrolled in a course at the College.</p>
<b>Visitor</b>	<p>means a person who is not a Staff member or Student of A.C.O.A.E. RTO, who takes part in any research, teaching or other activity that would normally be conducted by a Staff member or Student, or visits a part of the College in which research or scholarship, or any related activity, is conducted and includes persons appointed pursuant to conjoint, adjunct, emeritus, honorary and visiting appointments made or approved by the College from time to time.</p>

## OWNERSHIP OF INTELLECTUAL PROPERTY

### 1. Intellectual Property created by Staff

Unless otherwise agreed, all Intellectual Property created or developed by a Staff member in the course of his/her employment at the College, except where specifically excepted by this policy, is the property of the A.C.O.A.E. RTO.

### 2. Intellectual Property created by visiting, adjunct and conjoint appointees

Unless otherwise agreed, all Intellectual Property created by Visitors is the property of the College where the Intellectual Property:

- is created with substantial contribution by the College or use of College Resources;
- has resulted from the use of pre-existing Intellectual Property owned by the College;
- belongs to a set of Intellectual Property generated by a team of which the person is a member and other members are College employees, and/or

- has been granted to the College and/or generated as a result of funding provided or obtained by the College.

### 3. Intellectual Property created by students

Unless otherwise agreed, Intellectual Property created by Students is the property of the College where

- the Intellectual Property consists of teaching materials;
- the student participates in a research team whose members include Staff members;
- the Intellectual Property has been created with substantial contribution by the College or use of College Resources beyond that normally available to Students;
- the Intellectual Property has been created as the result of pre-existing Intellectual Property owned by the College;
- the Intellectual Property has been

- created as a result of funding provided or obtained by the College;
- f. the Intellectual Property is subject of an existing agreement between the College with a third party (for example, Intellectual Property created as part of industry-sponsored research programs); or
  - g. the student creates work specifically commissioned by the College.

Notwithstanding (a) to (g) above, where a Student participates in creating Intellectual Property owned by the College:

- h. the Student will share in Net Commercialisation Revenues, if any, with all other creators/inventors according to College policies;
- i. the Student will not be impeded in or from submitting a thesis for examination, or from completing any other requirements necessary for the award of a degree or other qualification.

Where a Student's supervisor makes a contribution to the creation of Intellectual Property, the Intellectual Property will be owned jointly by the Student, the Student's supervisor and the College.

#### 4. Commissioned works

A.C.O.A.E. RTO will own all Intellectual Property that it has commissioned a Staff member, Student, Visitor and/or other party to create or develop for the College purposes, including any course materials. A commission will be evident if an arrangement or agreement has been signed in writing, and such an agreement may or may not include provision for a financial benefit or nonfinancial benefit (such as relief from teaching or other duties).

The College, at its discretion, may give a Creator of commissioned works a non-exclusive licence to use the works for teaching purposes, provided that such a licence will not extend to the use of the works for any purpose which is in direct competition to the College.

#### 5. Exclusions and exemptions

A.C.O.A.E. RTO does not assert ownership of:

- a. pre-existing Intellectual Property generated by a Staff member prior to that Staff member's employment with the College, provided that the Staff member advises the College of the existence of their pre-existing Intellectual Property within 30 days of their employment;
- b. the Intellectual Property in course and educational materials, or creative or scholarly works, developed by a Staff member where this IP was not developed for specific College purposes; and
- c. Intellectual Property created by a Student as part of his/her course or submitted for any award conducted by the College. Without limitation, such IP may include drawings, models, designs, plans and specifications, essays, theses or other work.

Unless the work is specifically commissioned by the College or produced with the assistance of College resources beyond those normally available to Students or Staff, the ownership of Intellectual Property in scholarly books, articles, course materials, or other scholarly works or subject matter generated by Staff or Students is retained by the Creator.

Further:

- d. subject to any pre-existing lawful confidentiality agreement, Creators of such scholarly books, journal articles, course materials, or subject matter generated, shall grant A.C.O.A.E. RTO a non-exclusive, royalty free, perpetual, irrevocable, world-wide licence (including the right to sub-licence) to make available for consultation, loan, or copying, any copy of a thesis or any other scholarly or creative work deposited with the College for the purposes of advancing teaching, learning or research;
- e. upon request to the College Manager, Staff, Visitors and Students may be granted permission to use the College's Intellectual Property in course and educational materials.

#### 6. Student Research at other Institutions

Where Students may be involved in research carried out at Institutions which are affiliated with the College or any other institution

independent of the College and where the College does not assert ownership of Intellectual Property, agreement must be reached in writing between the Student and the host institutions regarding the rights of the Student to Intellectual Property.

## **COMMERCIALISATION BY AUSTRALASIAN COLLEGE OF ADVANCED EDUCATION RTO**

### **1. General principles**

- a. The College will use reasonable endeavours to Commercialise its Intellectual Property.
- b. The use of course and educational materials, and/or creative and scholarly works, by the College for the purposes of teaching, learning and research in its programs, whether in Australia or overseas, does not constitute Commercialisation for the purposes of this policy.
- c. The process of Commercialisation will normally be undertaken in collaboration with the Creators of any Intellectual property, and always in accordance with College policies and procedures.
- d. A.C.O.A.E. RTO shall decide, at its absolute discretion, whether to proceed with, continue or exit from any Commercialisation activities.
- e. Commercialisation revenues may include but are not limited to:

royalties upon sales by a licensee,

- (i) royalties from sub-licence fees received from a licensee,
- (ii) royalties from sub-licence fees received from a licensee,
- (iii) lump sum licence fees,
- (iv) proceeds of assignment or sale of the Intellectual Property (where a sale occurs),
- (v) signing fees,
- (vi) milestone payments,
- (vii) minimum annual payments,
- (viii) patent prosecution and maintenance expenses which are reimbursed to the College

### **2. Identification and Protection of Intellectual Property**

Staff, Visitors, contractors and Students must use reasonable endeavours to identify and disclose in writing to the College any Intellectual Property which has been created in the course of his/her employment, appointment or studies, prior to public disclosure, including all relevant details of that Intellectual Property. Staff, Visitors, contractors and Students must not apply for registration of, or rights associated with, Intellectual Property in their own name unless permitted by written agreement with the College following full disclosure.

### **3. Distributing Net Commercialisation Revenue**

If the College commercialises any Intellectual Property, it will distribute a share of Net Commercialisation Revenues to Creators that have a recognised interest in the Intellectual Property that has earned the revenue in question. Net Commercialisation Revenues will normally be distributed in the following manner:

- (i) one-third to be shared among all the Creators, being Staff members, Visitors and/or Students);
- (ii) if applicable, one-third to the Creator's institution (distributed pro rata to two or more institutions as the case may be) with the expectation that any revenue will be used to foster teaching and research, or if no such third-party institution exists, then the faculty of the College relevant to the Creator and the Commercialised work, and
- (iii) one-third to the College for its general purposes, with the expectation that it will be used to foster teaching and research.

### **4. Commercialisation by Creators**

- a. The College reserves the right to prohibit the Commercialisation by Creators of Intellectual Property which, in the reasonable judgement of the College, is incompatible with the best interests of the College.
- b. If the College decides not to Commercialise, but also not to prohibit

Commercialisation of, any particular Intellectual Property, the College will normally negotiate with the Creators:

- (i) for the licensing or assignment of the Intellectual Property by the College to the Creators, and
- (ii) in respect to any commercialisation revenues received by the Creators, the payment to the College of a share of those revenues to compensate the College for the use or contribution of its facilities and resources.

### **PUBLICATION OF INTELLECTUAL PROPERTY**

- (a) The College encourages its Staff, adjunct Staff and Students to publish their scholarly, research and creative outcomes.
- (b) However, the College may sometimes require that certain Intellectual Property be kept and maintained in confidence, so as not to adversely affect its Commercialisation prospects or other interests. Under certain circumstances, Staff, Students and/or Visitors may be asked to enter into specific confidentiality agreements. Other persons (including any contractors, service providers or agents of the College) may also be asked to protect the Confidential Information as part of their agreements or contracts.
- (c) The objective to Commercialise Intellectual Property is not to operate to the exclusion or significant delay of the objective to publish, and the two objectives need to be reconciled and accommodated in any discussions or proceedings.
- (d) Where both the College's publication and Commercialisation objectives coincide, publications will proceed in a managed way that allows both the objective of publication and the objective of Commercialisation to be realised.

### **RESPECTING THIRD PARTY RIGHTS**

All Staff, Students and/or Visitors are required to respect the rights of third parties in relation to Intellectual Property, and members may be required to provide necessary information and otherwise co-operate in this process. This may involve:

- (e) Correctly identifying the ownership of underlying material for any new development;

- (f) Correctly acknowledging the contribution of third parties;
- (g) Not infringing the moral rights of third parties; and
- (h) Not impinging upon the cultural, spiritual or other interests of indigenous people.

### **MORAL RIGHTS**

A.C.O.A.E. RTO acknowledges the moral rights of its Staff and Students as prescribed by the Copyright Act 1968 - namely the right of attribution, the right not to have authorship falsely attributed, and the right of integrity of authorship.

The College may require the Creator to provide written consents or waivers in respect of the Creator's moral rights in relation to certain works that may be created, prior to commencement of any work in which moral rights may subsist.

### **DISPUTES**

- (a) Where a dispute arises between the College and a Creator concerning the ownership of Intellectual Property, parties will attempt to resolve the matter in accordance with the Australian Code for the Responsible Conduct of Research and relevant College policies, guidelines and procedures.
- (b) In the first instance, parties should seek to resolve a dispute at the lowest possible level in accordance with principles set out in the (a). This avenue of resolution may include using such processes as informal discussion and mediation.
- (c) If the dispute is not resolved by discussion or mediation or a similar process within a reasonable timeframe, then it should be submitted for resolution via the provisions of the College's Grievance Policy.
- (d) Notwithstanding (a) to (c) above, any party may elect at any time to have a matter heard by a relevant external body or to refer to a matter for legal advice and/or proceedings.

### **ROLES AND CONFLICTS**

The College Manager will own and manage this Policy in accordance with the College's legal, commercial, ethical and other responsibilities. Any conflicts emerging in the application of this policy may require resolution by the Board of Directors.

## REFERENCES

National Principles of Intellectual Property  
 Management for Publicly Funded Research  
 Australian Code for the Responsible Conduct of  
 Research  
 Copyright Act 1968  
 Copyright Amendment (Moral Rights) Act 2000  
 Designs Act 2003  
 Patents Act 1990 Trade Marks Act 1995  
 Competition and Consumer Act 2010  
 Staff Code of Conduct  
 Student Grievance Policy and Procedures

## DOCUMENT STATUS

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