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## INTELLECTUAL PROPERTY POLICY

### Contents

1.	Introduction .....	1
2.	Purpose and scope .....	2
3.	Definitions.....	2
4.	Acknowledgement of Ownership .....	3
5.	Moral Rights.....	3
6.	Determining Ownership and Interests of Intellectual Property Rights and Equities .....	3
6.1	Employees of the College.....	3
6.2	Members of the College.....	4
6.3	ACEM Board, Councils and College Entities .....	4
6.4	Research.....	5
6.5	Trainees.....	5
6.6	Board and Council Members .....	5
6.7	Contractors, Consultants and Volunteers .....	6
7.	Permitted Dealings with Intellectual Property .....	6
7.1	Employees, Members and Trainees of the College .....	6
7.2	The College.....	6
8.	Notification of Dealings with Intellectual Property .....	6
9.	Prohibited Dealings with Intellectual Property.....	6
10.	Document Review .....	7
10.1	Responsibilities .....	7
10.2	Revision History .....	7

### 1. INTRODUCTION

The Australasian College for Emergency Medicine (ACEM; the College), through its various activities, creates and contributes to a wide range of policies, research, publications, seminars and documents. Some of the materials created by or for the College have commercial or strategic value. Thus, the College has a real interest in protecting and appropriately managing its intellectual property, whether that be through registered trademarks, copyright or otherwise.

As such, the College needs to ensure that it can freely use all intellectual property created by or for it and this policy seeks to outline the issues that need to be considered when intellectual property is created, and to guide further decisions (if any) necessary to ensure clarity and certainty of intellectual property use, recording and management.

The College does not seek to claim ownership of legitimate rights of researchers (whether funded by the College or not).

If in doubt, queries about the rights of College members, trainees researchers, contractors and collaborators working with the College should be directed to the Office of the CEO.

## 2. PURPOSE AND SCOPE

The purpose of this policy is to:

- (a) secure and protect the intellectual property of the College
- (b) clarify rights to access and use the intellectual property of the College
- (c) clarify ownership of intellectual property of employees of the College
- (d) clarify the permitted use of any of the College intellectual property material by third parties, College members and trainees
- (e) clarify ownership over intellectual property attributable to members and trainees
- (f) attribute moral rights to original authors/creators
- (g) clarify dealings between authors and third parties.

The College is committed to excellence in teaching, research and the dissemination of knowledge amongst the community. As an educational institution, the College's integral aim is to produce and circulate both novel and existing knowledge.

The College recognises that the publication and general use or dealings of scholarly works is inherently essential to the processes of education and research. This policy therefore provides for clarity in the delineation of ownership, commercialisation and general use or dealings with intellectual property.

## 3. DEFINITIONS

### ***ACEM / the College***

means the Australasian College for Emergency Medicine.

### ***Access***

means access to intellectual property in both physical or electronic forms or forms which will allow for the use of intellectual property or the general viewing, listening or consumption of the intellectual property.

### ***Author***

means the original creator(s) or author(s) of intellectual property.

### ***Dealing or Deal***

Dealing with intellectual property means viewing, listening, reproduction or copying, communication to members, trainees or employees for the purposes of employment, studying or expressly agreed purposes. Dealings do not include financial or commercial purposes, unless agreed otherwise.

### ***Employees***

means persons who are employed under contracts of employment by the College whether on full-time, part-time, casual, temporary, seasonal or one-off basis.

### ***Fellows***

means Fellows of the College.

### ***Intellectual Property***

includes any thing, matter or right which may give rise to interests under the *Copyright Act 1968* (Cth), *Designs Act 2003* (Cth), *Trade Marks Act 1995* (Cth), *Patents Act 1990* (Cth), trade secrets or confidential information at common law. This includes all existing and future intellectual property interests.

**Members**

except where otherwise stated, means a person designated as a 'member' in the ACEM Constitution and associated regulations; and, for the purposes of this policy, also includes any other person, other than trainees, serving on any College entity or as a College representative.

**Resources**

may include financial resources, non-financial resources such as the College's premises, equipment, tools, human resources or general academic resources and any valuable consideration.

**Third Parties**

means parties other than "employees", "members", "trainees" and "the College", as the case may be.

**Trainees**

means trainees enrolled in and undertaking the FACEM Training Program and, for the purposes of this policy, also includes Emergency Medicine Certificate and Emergency Medicine Diploma trainees, and Specialist International Medical Graduates (SIMGs) undertaking College requirements for the purpose of obtaining eligibility for election to Fellowship of the College.

**Use**

Use of intellectual property includes, but is not limited to:

- all rights that are legally attached with the type[s] of intellectual property at hand;
- communication to persons in any form;
- all dealings as defined in this policy; and
- licensing or assignment to third parties.

The purposes of use may include research, teaching, review, training, commercial exploitation, trading and financial.

## **4. ACKNOWLEDGEMENT OF OWNERSHIP**

To clearly acknowledge ACEM's ownership and that the right to use any intellectual property may be restricted, the intellectual property of the College will be denoted:

© Copyright – Australasian College for Emergency Medicine. All rights reserved.

## **5. MORAL RIGHTS**

The College recognises that the moral rights in intellectual property vest in the original creator(s) or author(s) of works. The author has the right to be identified as the author of the intellectual property, reproductions and adaptations of that intellectual property. Whilst the College has the right to adapt and modify the works and the intellectual property, the author has the right not to have the intellectual property subject to derogatory treatment including material distortion, alteration, mutilation of the intellectual property, or any other action which is prejudicial to the author's honour and reputation.

## **6. DETERMINING OWNERSHIP AND INTERESTS OF INTELLECTUAL PROPERTY RIGHTS AND EQUITIES**

### **6.1 Employees of the College**

- (a) It is the position at the law generally, that intellectual property created by an employee in the course of their work will be the property of the employer. Unless otherwise agreed in writing, the College has beneficial and legal ownership of all existing or future intellectual property created or developed by employees in the course of employment.

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- (b) All College staff are required to sign a letter of offer or contract, as applicable, as part of their acceptance of employment at the College. This letter of offer or contract contains specific provisions regarding intellectual property and confidentiality and recognises that any information obtained, any secret or invention discovered, or any document created, during the employee's engagement by the College, and which it would be of commercial importance or advantage to the College to have, shall vest in and be the property of the College (including all copyright therein).
  - (c) Ownership of existing or future intellectual property created beyond the course of employment, in the author's own time, and at the author's own cost, will remain entirely with the author.

## 6.2 Members of the College

- (a) Unless otherwise agreed in writing, intellectual property created by members of the College for their own purposes will generally vest in the creating author(s).
- (b) Unless otherwise agreed in writing, intellectual property created or developed by members as a result of the full or partial contribution or use of the resources of the College shall vest in the College or by agreement be subject to joint authorship between the author and the College.

In particular and for the purpose of clarity, the intellectual property of materials produced by College members in the course of their undertaking activities as part of or on behalf of an ACEM entity will be considered to vest fully in the College. Examples include, but are not limited to, the production of: discussion papers to inform the activities of ACEM entities; examination questions in any format, including those in formats utilised in 'clinical' examinations; reports, such as training site accreditation reports; standards and guidelines in relation to education, training and clinically-related activities; and evaluations on College or other activities or entities.

As such, and notwithstanding Section 5 of this policy, the material may be subject to alteration by the entity for which the material is being developed, prior to being issued for the purpose for which it was produced.

- (c) In circumstances where intellectual property may be vested in the College or subject to joint authorship between the author and the College, matters including the proportions of ownership, rights attached to ownership and any other matters which may be relevant can be jointly decided through a written agreement between all relevant parties; and in the absence of such agreement jointly on a 50/50 basis.
- (d) The College may require members who participate in College funded activities to sign an agreement or give a written acknowledgement that intellectual property will vest in the College.
- (e) Sometimes, external parties providing funding (e.g. government funding), will require that members or College representatives agree and acknowledge that intellectual property will vest in either the funder (e.g. government) or the College or that the College or funder is granted a licence to use or otherwise exploit that intellectual property.

## 6.3 ACEM Board, Councils and College Entities

- (a) Committees, Subcommittees, Sections, Working Groups and other established entities of the College are part of the College legal entity, and do not have independent legal status. Intellectual property used or developed by such bodies is therefore College intellectual property and should be dealt with in accordance with this policy.
- (b) It is recognised that the College Board and Councils will store, and allow use of, some intellectual property with related Colleges, medical societies and others.
- (c) On any occasion where the Board or Councils use, communicate or share intellectual property with others, including other Colleges and third parties, they should ensure that:-
  - the requirements of this policy are met;

- the College through the CEO is aware of the intention to communicate or share the intellectual property in question;
- all intellectual property carries the acknowledgement of ownership as specified in clause 5 of this policy; and
- those others (Colleges, third parties, etc.) using College intellectual property do so under explicit written arrangements (licence, MOU, agreements, etc.).

#### **6.4 Research**

- (a) The College (and the College Foundation) funds and supports significant research projects and other similar activities.
- (b) It is not intended that the College claim ownership of legitimate research work, simply because it is funded by the College. Most research funded by College grants under its research program will retain intellectual property ownership with the researchers.
- (c) However, where research is commissioned by the College on a contract basis, for the benefit of the College, it will be usual to require in the contract commissioning the work that intellectual property created will be owned by the College.

#### **6.5 Trainees**

- (a) During their training with the College, trainees acquire the appropriate information, knowledge and skills to graduate with FACEM or other designation. Ordinarily the College has no controls or rights over the manner in which an individual trainee may subsequently use or develop information, knowledge and skills acquired during training.
- (b) However, where the College (or others) provides specific documentation and/or materials to trainees, that documentation and/or materials are likely to be subject to copyright protection, and therefore should not be utilised by trainees or others more broadly than intended, without potentially incurring liability.

As part of trainees agreeing to participate in the applicable training program of the College, they will also sign an acknowledgement that specific documentation and/or materials provided to trainees during the course of the training program are owned by the College and subject to intellectual property protection.

#### **6.6 Board and Council Members**

- (a) Board and Council members often contribute significantly to the development of materials for the College. Board members, as directors of the organisation, and Council members are required to protect the intellectual property of the College and ensure that they comply with College policies on the disclosure of College information.
- (b) Materials created by Board and Council members for the College will usually be regarded as having been created by them as agents for the College. Accordingly, the College will usually retain intellectual property rights in that material.
- (c) There may be occasions, however, when joint authorship between the College and a Board or Council member is appropriate. In these special cases, the individual should raise a request at the meeting of the Board, Council of Advocacy, Practice and Partnerships or Council of Education as applicable that joint ownership be recognised, to obtain explicit approval of this joint ownership, and an appropriate agreement or arrangement will be documented to confirm future use, etc.

## **6.7 Contractors, Consultants and Volunteers**

- (a) Contractors, consultants and volunteers are not employees of the College, and accordingly are not covered by the usual position at law. As with members, specific arrangements will need to be made with each contractor, consultant and volunteer in relation to intellectual property that may be developed by them, either with or for the College. In particular, commercial contractors and consultants should have formal agreements which clarify the position in relation to intellectual property and, preferably, ensure that any intellectual property developed will become the property of the College.

## **7. PERMITTED DEALINGS WITH INTELLECTUAL PROPERTY**

### **7.1 Employees, Members and Trainees of the College**

- (a) Generally employees, members and trainees of the College are able to deal with any intellectual property belonging to the College, save for situations where dealings are of a commercial or financial purpose or nature or travel beyond the meaning of dealing as defined in this policy.
- (b) Employees of the College may communicate intellectual property to employees, members or trainees of the College for the purposes of administration, research, review, training or teaching.
- (c) As considered appropriate, ACEM documents will carry the acknowledgement of ownership statement as specified in clause 5 of this policy.
- (d) In some cases, it may be necessary to require those accessing intellectual property to sign a formal acknowledgment or licence agreement.

### **7.2 The College**

The College may seek a right to use intellectual property, whether or not ownership is vested in the College. The College may consult with the owner of intellectual property, and agree in writing as to the manner and extent of such licensing.

## **8. NOTIFICATION OF DEALINGS WITH INTELLECTUAL PROPERTY**

- (a) Should employees, members or trainees be required to engage in dealings, other than as defined in this policy, or dealings of a commercial or financial nature with intellectual property in which the College may have an interest, then notification must be given to the College.
- (b) Formal agreement or acknowledgements may be required. All works provided will carry the acknowledgement of ownership statement as specified in clause 5 of this policy.
- (c) Notification must be given prior to dealing with any intellectual property in which the College may have an interest. Written notification must provide a full and frank disclosure of the details of the proposed dealings.
- (d) Upon the College receiving notification, the College and the relevant parties shall discuss whether the intended dealings are permitted, and expressly agree in writing as to the manner and extent to which such intended dealings may be carried out. The College is not obliged to permit the intended dealings.

## **9. PROHIBITED DEALINGS WITH INTELLECTUAL PROPERTY**

- (a) Unless by prior agreement with the College, dealings with intellectual property in which the College may have an interest are generally prohibited, except in accordance with this policy, particularly where they are dealings of a financial or commercial nature.

(b) Prohibited dealings in relation to intellectual property which the College may have an interest in may include, but are not limited to:

- distributing or licensing or communicating intellectual property in any form to any third parties to which the College has not consented;
- publishing intellectual property in any form;
- making copies or reproductions of intellectual property in any form;
- making adaptations of intellectual property;
- entering into commercial arrangements; or
- causing intellectual property to be heard or seen in public,

other than for the purposes of normal College activities and processes.

## 10. DOCUMENT REVIEW

Timeframe for review: every two (2) years, or earlier if required.

### 10.1 Responsibilities

Document authorisation: Board

Document implementation: CEO

Document maintenance: Governance and Standards Manager

### 10.2 Revision History

Version	Date of Version	Pages revised / Brief Explanation of Revision
v1	Mar-2011	Approved by Council
v2	Dec-2016	Approved by Board
v3	Dec-2018	Two-yearly review and amendment to include Sections