

Intellectual Property Policy

Melbourne - Australia

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Purpose

This policy is designed to establish clear rules governing intellectual property at Box Hill Institute to promote:

- the security, currency and growth of the Institute's intellectual property.
- a climate of research, invention, innovation and commercial development at the Institute.
- mutually beneficial commercial partnerships in the development of intellectual property between BHI and individuals or external bodies.
- the respect BHI employees, students, and independent contractors must have for the intellectual property rights of others and compliance with intellectual property laws and related agreements.

Scope

This policy applies Institute wide and to all students, employees, and independent contractors of the Institute.

Policy

Ownership of Intellectual Property

Employees and independent contractors

The Institute will own the following intellectual property and may reproduce, adapt or otherwise use this material for administrative, commercial or educational purposes:

- intellectual property that results from the efforts of employees or independent contractors pursuant to the terms of their employment or engagement at the Institute or while undertaking professional development paid for by the Institute.
- intellectual property generated by employees or independent contractors through substantial use of the Institute's resources and/or services. This includes teaching and learning materials.

The following are exceptions to the above:

- when an alternative agreement has been negotiated between the Institute and an employee or independent contractor, ownership of the resulting intellectual property will be governed by that agreement.
- when an employee (not an independent contractor) whose role entails the production of scholarly work, (not being teaching or learning materials or non-scholarly work), the Institute:
 - assigns the copyright ownership of that work to that person.

- reserves the right to reproduce or disseminate that work for the Institute's teaching or research purposes on a royalty-free basis.
- encourages the employee to make public and publish that work except when the employees know that the work directly relates to intellectual property that the Institute is currently developing (or potential intellectual property that the Institute could have an interest in developing). In this instance, when publishing or making public that work could reasonably be seen to affect the potential commercial benefit to the Institute of intellectual property being developed (or potentially developed), then written permission from the relevant General Manager or Executive Director is needed before that work is made public or published.

Where intellectual property is created by employees and independent contractors independent of their employment or engagement with the Institute and that property is not the result of their efforts in their role as employee or contractor, or an alternative agreement with the Institute assigns intellectual property ownership to the individual, the individual owns any such intellectual property.

Where an employee or independent contractor has an idea for the development of intellectual property that may have commercial value, they are encouraged to enter into a partnership agreement with the Institute to jointly develop and market this intellectual property.

External parties

External parties are encouraged to enter into partnership agreements in intellectual property with Box Hill Institute such as:

- the external party providing funding for the creation of intellectual property at or by the Institute.
- the external party working with the Institute to commercialise intellectual property developed at or by the Institute.

In such cases, ownership of the intellectual property will be governed by the agreement entered into between that party and the Institute.

Students

Ordinarily, students at the Institute own the intellectual property in works created in the general course of their studies. This could include essays, paintings, or other original works. Staff should get permission from the students if they want to copy or communicate their works for purposes unrelated to assessment. Staff may reproduce and transmit student work for assessment purposes.

However, when the generation of the intellectual property created by a student has involved substantial additional use of the Institute's resources and/or services (above those normally provided to students in the course of their studies) the Institute owns the intellectual property. Where students wish to vary this arrangement, they can negotiate an alternative arrangement with the Institute. This should be done prior to the development of the intellectual property in question.

Avoiding potential conflicts of interest in intellectual property ownership

Institute employees and independent contractors will frequently legitimately own the intellectual property in what they produce outside of the terms of their employment or engagement at the Institute. For example, a teacher may write a novel or compose a piece of music outside of working hours and outside the terms of his or her employment or engagement at the Institute. Also a new employee may bring teaching or training materials that they own with them to the Institute.

When an Institute employee, independent contractor or student is involved in the development of intellectual property and where clarification about ownership is required, or there is the possibility of a potential conflict of interest in the ownership of this intellectual property between themselves and the Institute, they should enter into an agreement with the Institute to clarify the ownership.

Moral Rights

Except where an alternative agreement has been negotiated between the Institute and a student, contractor or employee, and where intellectual property is a copyright work, the Institute will take all reasonable steps to preserve the moral rights of the creator/author.

Identification of Institute Copyright

Institute employees and independent contractors shall ensure that ownership of copyright in Institute's material is asserted by the presence of:

- the Institute's logo (for all media)
- a verso page (for all print-based materials)
- the identification of BHI copyright on each page of the material (for print-based materials)
- the identification of BHI copyright with an appropriate copyright warning notice (for CDs, computer software, websites and other new media).

Pro forma verso pages and copyright warning notices can be located at the Copyright website on Studentweb, the Library Intranet site and in the Box Hill Quality System.

Compliance with Intellectual Property Laws and Related Agreements

Institute employees and independent contractors will respect the lawful rights of intellectual property owners, including owners other than the Institute, in their use of intellectual property in the course of their employment, and will comply with requirements imposed by law or agreement.

When putting print and graphic material on line under the Institute's CAL (Copyright Agency Limited) licence (such as articles, chapters of books and photos), staff must only do so using the Institute's approved online platforms as identified in the Institute's Copyright Guides on the Institute Intranet and Quality System.

Intellectual property clauses in contracts

Standard employment contracts between the Institute and employees shall contain an intellectual property clause that reflects the intellectual property ownership in compliance with this policy.

Contracts between the Institute and other parties for the provision of services will include approved clauses to:

- protect the Institute's intellectual property.
- ensure that such parties understand the intellectual property rights of other parties in the production and or transmission of course or other materials.
- ensure that such parties are legally responsible for any illegal use they may make of intellectual property belonging to other parties and so mitigate risk to the Institute.

The Institute also recognises the value of intellectual property and the value of contracts where the Institute gains ownership of intellectual property. Where the Institute negotiates contracts with other parties both in Australia and overseas, effort should be made to gain ownership of the intellectual property. Where this is not possible, effort should be made to seek a joint ownership arrangement of the intellectual property including agreement for the Institute to make use of the intellectual property outside of the agreement. Alternatively,

where this is not possible, effort should be made to seek an unlimited or limited licence for the Institute to use the intellectual property outside of the agreement.

Commercialisation of Intellectual Property

Licensing of Institute Owned Intellectual Property

Where approaches are made by another party for use of Institute owned intellectual property, employees receiving the request should seek approval from their Centre Manager or Direct Link General Manager, in order to negotiate an appropriate licence agreement. All such agreements should be recorded on the Institute's Contract Register.

Employees or independent contractors who identify Institute owned intellectual with the potential of commercialisation should inform their Centre Manager or Direct Link General Manager, in order to negotiate an appropriate licence agreement.

Development of Intellectual Property for Commercial Benefit

The Institute encourages partnerships between itself and other parties to develop intellectual property for joint commercial benefit. These parties could include the Institute's employees or independent contractors or external parties.

Where the Institute arranges or agrees to the commercialisation of intellectual property the Institute may negotiate an agreement regarding, inter alia, distribution of any net revenues from such development or commercialisation with the employee/s or independent contractor/s responsible for the creation of the intellectual property. This Agreement will be negotiated, agreed and documented prior to the commercialisation of intellectual property and the documents lodged with the relevant General Manager or Executive Director, and added to the Institute's Contract's Register.

Where an employee or independent contractor arranges or agrees, with a third party for the commercialisation of intellectual property created by the member of staff or independent contractor pursuant to the terms of their employment or engagement by the Institute, the member or members of staff or independent contractor will disclose such arrangements or agreements to the Institute and will negotiate an appropriate Agreement regarding, inter alia, distribution of any net revenues from such development or commercialisation with the Institute. This Agreement will be negotiated, agreed and documented prior to the commercialisation of the intellectual property and the documents lodged with the relevant General Manager or Executive Director.

The Institute will appoint an Intellectual Property Advisory Group comprising the Deputy CEO, Chief Finance Officer, Executive Director Organisation Development, Executive Manager Corporate Governance and the Institute Intellectual Property Adviser. This Group will convene as needed at the request of the General Manager or Executive Director to evaluate proposals for the commercialisation of Institute intellectual property.

Trade Marks, Patents and Other Forms of Intellectual Property

Trade Marks, patents, business names, and domain names can only be registered or discontinued with the approval of the Executive Manager Corporate Governance. Once approval has been obtained, the registration is undertaken by the office of the Executive Manager Corporate Governance and the registration is maintained on file.

Requests for registration of a trade mark for marketing and or branding purposes, and domain names must initially be forwarded to the Executive Manager Marketing and Customer Service for endorsement. Requests which are endorsed to proceed will be forwarded to the Executive Manager Corporate Governance.

Dispute resolution

Any dispute concerning the application of this policy shall be handled through the Institute's Grievance Policy and Procedures for Students and Staff.

Definitions

Intellectual property is defined according to the relevant Australian legislation and includes any proprietary rights that arise from or are capable of arising from:

- Copyright vesting by virtue of the *Copyright Act 1968* in literary works* (including computer programs), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances.
- Patents under the *Patents Act 1990*
- Trade marks registered under the *Trade Marks Act 1995* and unregistered trade marks used or intended for use in business
- Designs registered under the *Designs Act 1906*
- New plant varieties under the *Plant Varieties Act 1987*
- Circuit layouts under the *Circuit Layout Act 1989*
- Trade Secrets and other Confidential Information

Research is defined as an original investigation to gain knowledge, understanding and insight. It involves creative work and artistic endeavours undertaken systematically in order to increase the stock of knowledge, including knowledge of humans, culture and society, and the use of this stock of knowledge to devise new applications. Research is characterised by originality and includes creative activity and performance. It has investigation as a primary objective, the outcome of which is new knowledge, with or without a specific practical application, or new or improved materials, products, devices, processes or services. Research ends when work is no longer primarily investigative.

Scholarly work is work relating to scholarship where scholarship is the creation, development and maintenance of the intellectual infrastructure of subjects and disciplines in educational institutions. This can include scholarly books, scholarly articles, scholarly editions, scholarly conference papers, scholarly dictionaries and contributions to major research databases. This does not include teaching materials that do not embody original research.

Moral Rights are the rights individual creators have in relation to copyright works they have created. Moral rights are separate from the "economic rights" of the copyright owner, such as the right to reproduce the work or communicate it to the public. Moral rights aim to protect the creator's interest in their work to ensure that the creator is acknowledged, not falsely attributed to an altered version of the work and to protect the reputation of the creator by preserving the integrity of the work.

Educational purposes

Intellectual property shall be taken to have been reproduced, adapted or otherwise utilised for the educational purposes of the Institute if it:

- is reproduced or otherwise utilised in connection with a particular course of instruction provided to enrolled students of the Institute.
- is reproduced or otherwise utilised for inclusion in the collection of the Institute library or any other resource repository at the Institute.

- is provided to students of the Institute, or students at another Institute, on a cost recovery basis.

Commercialisation:

- means to publish, sell, hire, licence or otherwise dispose of or deal with any product or service based on or incorporating the intellectual property; **but**
- excludes the provision of materials to enrolled students of the Institute.

Net Revenues means revenues after deducting all costs associated with the development, protection, marketing and administration of the intellectual property.

Verso Page means a statement appearing as the first page of printed material that contains the following;

- universal copyright symbol
- description of rights
- the name of the Institute
- the year of publication.

Code of Conduct

All employees are expected to conduct themselves in a manner consistent with the Code of Conduct for the Victorian Public Sector and in accordance with the Box Hill Institute Code of Conduct for Staff

All students are expected to conduct themselves in a manner consistent with the Institute's Student Code of Conduct.

Responsibilities

The Institute's **Governance and Policy Officer** is responsible for providing advice and supplying staff with information and training relating to copyright and the intellectual property policy of the Institute. This Officer will also provide advice on intellectual property clauses in contracts.

All Employees and Independent Contractors are responsible for ensuring appropriate identification of Institute copyright and for compliance with Intellectual Property laws and related agreements.

All Managers engaging the services of contractors or staff to produce or transmit educational materials are responsible for ensuring that these contractors and employees understand their responsibilities in observing the intellectual property rights of other parties in their production or transmission of such materials.

General Managers / Executive Directors are responsible for endorsing applications from staff for the commercialisation of intellectual property and referring these to the Deputy Chief Executive Officer.

The Deputy Chief Executive Officer is responsible for convening an ad-hoc Intellectual Property Advisory Group to assess proposals and for finalising an agreement between the Institute and relevant parties in relation to the commercialisation of intellectual property.

The Chief Executive Officer is responsible for reaching a decision as to whether the Institute will be involved in the process of commercialisation.

The Chief Financial Officer is responsible for ensuring that appropriate intellectual property clauses are included in contracts for the supply and procurement of services.

The **Executive manager Corporate Governance** is responsible for approving the registration and removal of registration of Institute trademarks, patents, business names and domain names.

The Executive Manager Marketing and Customer Service is responsible for considering requests for registration of trade marks for marketing and or branding purposes, and domain names and for forwarding those which are endorsed to proceed to the Chief Finance Officer for approval.

The Executive Director, Organisational Development is responsible for ensuring that appropriate intellectual property clauses are included in contracts of employment.

The Intellectual Property Advisory Group is responsible for making a recommendation to the CEO as to whether the Institute should be involved in the process of commercialisation of intellectual property.

References and Compliance Requirements

The following acts with their accompanying Regulations:

Copyright Act 1968 (Cth)

Patents Act 1990 (Cth)

Trade Marks Act 1995 (Cth)

Plant Breeder's Rights Act 1994 (Cth)

Designs Act 2003 (Cth)

Circuit Layouts Act 1989 (Cth)

Trade Practices Act 1974 (Cth)

Related Documents

[Intellectual Property Explanatory Guide](#)

[Copyright and Research Guide](#)

[Contracts and Agreements Policy & Procedure](#)

[Document Control of Educational Materials Policy and Procedure](#)

Review

This policy must be reviewed no later than five (5) years from the date of endorsement. The policy will remain in force until such time as it has been reviewed and re- approved or rescinded. The policy may be withdrawn or amended as part of continuous improvement prior to the scheduled review date.

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Accountable Manager:	Executive Director , Corporate Governance
