

## **Australian and New Zealand College of Anaesthetists INTELLECTUAL PROPERTY POLICY**

### **1. PURPOSE**

ANZCA, in pursuit of its mission “to serve the community by fostering safety and quality patient care in anaesthesia, intensive care and pain medicine”, creates and contributes to a wide range of policies, research, publications, seminars and documents. Some of the materials created by or for ANZCA have commercial or strategic value. Thus, ANZCA has a real interest in protecting and appropriately managing its intellectual property (IP).

### **2. INTRODUCTION**

At the very least, ANZCA needs to ensure that it can freely use all intellectual property created by it or for it. ANZCA 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. The introduction of an intellectual property policy therefore provides for clarity in the delineation of ownership, commercialisation and general use or dealings with intellectual property.

**ANZCA does not seek to claim ownership of legitimate rights of researchers (whether funded by ANZCA or not).**

However, this policy seeks to outline the issues that need to be considered when intellectual property is created, both within the College and in collaboration with partners, and to guide further decisions (if any) necessary to ensure clarity and certainty of intellectual property use, recording and management.

Consideration needs to be given to the protection and mediums of sharing IP as a result of increasing reliance on digital and social networking for sharing and gathering of information. Guidance in this area is available through the ANZCA intellectual property procedures and internet, email and computer use policy.

Queries about the rights of Fellows, researchers, contractors and collaborators working with ANZCA and requests for access to College IP should be directed to the office of the CEO.

### **3. OBJECTIVES**

The objectives of this policy are to:

- 3.1 Secure and protect the IP of ANZCA.
- 3.2 Clarify rights to access and use the intellectual property of ANZCA.
- 3.3 Clarify ownership of IP of employees of ANZCA.

- 3.4 Clarify the permitted use of any of ANZCA's IP material by third parties, Fellows and trainees.
- 3.5 Clarify ownership over IP attributable to Fellows.
- 3.6 Attribute moral rights to original authors/creators.
- 3.7 Clarify dealings between authors and third parties.
- 3.8 Clarify ownership of IP developed in collaboration with third parties.
- 3.9 Make relevant IP accessible for stakeholders.
- 3.10 Clarify consideration of IP as a product of social networking.

It is recognised that existing College IP needs to be identified, recorded and collated. Some existing College IP will be difficult to establish clearly and to identify proper provenance. This policy is therefore directed to ensure that as much as possible of the existing College IP is appropriately protected, and that, for the future, College IP is treated in accordance with this policy.

## **4. BODY OF POLICY**

### **4.1 Acknowledgement of ownership**

Legal methods of protection do not prevent external parties from reproducing College copyrighted material. To encourage compliance with the usage of College material which is publically available, the following principles should be followed:

- Using a copyright notice "©"
- Providing clear information on how external parties can request permission to reproduce materials
- Providing clear direction as to how material may be reproduced or disseminated

All intellectual property of the College will include the year of publication and be denoted "© Copyright 2011 – Australian and New Zealand College of Anaesthetists. All rights reserved" or "© Copyright 2011– ANZCA. All rights reserved" and thus clearly acknowledge the College's ownership and that the right to use any intellectual property may be restricted.

The College IP procedures provide guidance as to specific disclaimers for use in day to day College business.

### **4.2 Moral rights of author(s)**

The College recognises that the moral rights in intellectual property should be vested in the original creators or authors of works. The author has the right to be identified as the author of the intellectual property, reproductions and adaptations of that 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 that is prejudicial to the author's honour and reputation.

### **4.3 Determining ownership and interests of intellectual property rights and equities**

#### **4.3.1 Employees of the College**

Given that resources of the College are ordinarily expended in the course of employment by employees, the College has beneficial and legal ownership of all existing or future intellectual property created or developed by employees in the course of employment unless agreed otherwise. 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.

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.

All College staff are required to sign a standard agreement as part of their acceptance of employment at the College. That agreement 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).

#### **4.3.2 Fellows of the College**

Generally, intellectual property created by Fellows will be vested in the creating Fellow(s) subject to one exception.

Other than in respect of funded research, ownership of existing or future intellectual property which has been created or developed by Fellows as a result of the full or partial contribution or use of the resources of the College may be vested in the College or subject to joint authorship between the author and the College.

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.

The College may require Fellows who participate in College funded activities to sign an agreement or give a written acknowledgement that intellectual property will vest in the College. A form of acknowledgement is attached.

Sometimes external parties, providing funding (for example, government funding), will require that Fellows or College representatives agree and acknowledge that intellectual property will vest in either the funder (for example, government) or the College.

#### **4.3.3 Faculties**

Faculties of the College are part of the College legal entity, and do not have independent legal status. Intellectual property used or developed by the faculties is therefore College IP and should be dealt with in accordance with this policy. Faculty IP is held by the College in accordance with the relevant arrangements with other Colleges.

It is recognised that the faculties will store, and allow use of, some intellectual property with related Colleges, medical societies and others.

Faculties using, communicating or sharing intellectual property with others, including other Colleges and third parties should ensure that:

- The requirements of this policy are met;
- All IP carries the year of publication and description “© copyright 2011- ANZCA. All rights reserved.” Or “© copyright 2011 – Australian and New Zealand College of Anaesthetists. All rights reserved.;
- An alternate acceptable copyright description for faculties can include for example “© copyright 2011 – FPM ANZCA. All rights reserved” or “© copyright 2011 – Faculty of Pain Medicine, Australian and New Zealand College of Anaesthetists. All rights reserved”; and
- Those others (Colleges, third parties, etc) using College IP do so under explicit written arrangements (licence, MoU, agreements, etc).

#### **4.3.4 Research**

ANZCA (and the College foundation) funds and supports significant research projects and other similar activities.

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 IP ownership with the researchers.

However, where research is commissioned by the College on a contract basis, for the benefit of ANZCA, it will be usual to require in the contract commissioning the work, that IP created will be owned by the College.

#### **4.3.5 Trainees**

During their training with the College, trainees acquire the appropriate information, knowledge and skills to graduate with FANZCA 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.

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 training program of ANZCA, 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.

#### **4.3.6 Councillors**

Councillors are often the Fellows who contribute significantly to the development of materials for the College. As directors of an organisation, councillors are required to protect the intellectual property of the College and ensure that they comply with College policies on the disclosure of College information.

Materials created by councillors 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. There may be occasions, however, when joint authorship and/or other arrangements between the College and a councillor is

appropriate. In these special cases, the councillor should raise a request at council that joint ownership be recognised, to obtain explicit approval from council of this joint ownership, and an appropriate agreement or arrangement will be documented to confirm future use, etc.

#### **4.3.7 Contractors, consultants and volunteers**

Contractors, consultants and volunteers are not employees of the College, and accordingly will not be covered by the usual position at law. As with Fellows, 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 that clarify the position in relation to IP and, preferably, ensure that any intellectual property developed will become the property of the College.

#### **4.3.8 Joint development**

Where ANZCA (and any of the above mentioned entities) is involved with developing programs and content in conjunction with external partners resulting in a shared product, a memorandum of understanding (MoU) must be signed detailing where the IP will be vested and how the resulting IP will be shared, both between the developers and further on with additional parties. If there is potential for financial benefits to arise from the onsale of any IP this should be addressed in the MoU.

### **4.4 Permitted dealings with intellectual property**

#### **4.4.1 Employees, Fellows and trainees of the College**

Generally employees, Fellows 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.

Employees of the College may communicate intellectual property to employees, Fellows or trainees of the College for the purposes of administration, research, review, training or teaching. All documents will carry the description “© Copyright - ANZCA All rights reserved”.

In some cases, it may be necessary to require those accessing intellectual property to sign a formal acknowledgment or licence agreement.

#### **4.4.2 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.

### **4.5 Notification of dealings with intellectual property**

Should employees, Fellows 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. The process to receive formal approval is detailed in the College IP procedures for staff.

Formal agreement or acknowledgements may be required. All works provided will carry the description “© Copyright – ANZCA. All rights reserved”.

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.

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.

#### **4.6 Prohibited dealings with intellectual property**

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.

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.

#### **4.7 Social networking**

IP of individuals involved in ANZCA forums facilitating participatory learning and sharing of information will be subject to the ANZCA's IP ownership framework as presented in this document. Clear identification of posters will be available and terms and conditions on how to utilise ANZCA participatory spaces must be agreed to before individuals are able to contribute to discussion. Materials posted on ANZCA's website are subject to the terms and conditions as stated on that site.

Further guidance can be found in ANZCA's internet, email and computer use policy.

### **5. CONCERNS OR COMMENTS**

If you have any concerns about the intellectual property policy please contact the policy unit on +61 3 9510 6299 or via [policy@anzca.edu.au](mailto:policy@anzca.edu.au). Requests must be in writing and resolution of concerns will be sought as promptly as possible.

### **6. CHANGES TO ANZCA INTELLECTUAL PROPERTY POLICY**

The College may modify or amend this policy at any time. Formal notice of amendments will not ordinarily be given, but the current intellectual property policy will be available via the College website. The latest version of the policy can be accessed via the College website [www.anzca.edu.au](http://www.anzca.edu.au) or by contacting the College on +61 3 9510 6299.

### **7. RELATED DOCUMENTS**

- 7.1 ANZCA intellectual property procedures for staff
- 7.2 ANZCA internet, email and computer use policy

### 7.3 ANZCA copyright guide for staff

## 8. DEFINITIONS

8.8.1 “**Employees**” – Persons who are employed under contracts of employment by the College whether on full-time, part-time, casual, temporary, seasonal or one-off basis.

8.8.2 “**Fellows**” – Fellows of the College.

8.8.3 “**The College**” – The Australian and New Zealand College of Anaesthetists (ANZCA).

8.8.4 “**Trainees**” – Trainees of the College.

8.8.5 “**Author**” – The original creator[s] or author[s] of intellectual property.

8.8.6 “**Third parties**” – Parties other than “employees”, “Fellows”, “trainees” and “the College”, as the case may be.

8.8.7 “**Intellectual property**” “IP” – includes anything, 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.

8.8.8 “**Access**” – 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.

8.8.9 “**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.

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

8.8.11 “**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.

8.8.12 “**Assignment**” – When copyright is assigned; the recipient of the copyright becomes the new copyright owner. The assignment must be in writing and signed by or on behalf of the copyright owner.

8.8.13 “**Licensing**” or “**licence**” – A licence provides permission to utilise copyrighted work for a defined period or indefinitely within predetermined limits. A licence is not a transfer of ownership. A licence can be implied however having licence in writing provides clarity and is the preferred method. A licensee is generally restricted from further onward disseminating IP that has been licensed to them without consent of the owner.

8.8.14 **“Moral rights”** – Moral rights provided under copyright law are to protect the reputation and integrity of a creators work. They include the right of attribution of creation; the right not to have authorship of their work falsely attributed; and the right to integrity of authorship protecting them from their work being used in a derogatory way that may impact their character or reputation.

8.8.15 **“Memorandum of understanding”** or **“MoU”** – An MoU is an agreement between ANZCA or its agents and any third parties. It is to be used when ANZCA shares for research purposes or licenses use of its IP to another organisation; and/or when IP is created in conjunction with a third party and ownership is shared between two or more organisations.

8.8.16 **“Social media”** – web based spaces that facilitate social interaction between a community, usually publicly. Builds on the foundations of Web 2.0 and provides further avenues for sharing between community members.

## 9. CHANGE CONTROL REGISTER

Version	Author	Approved by	Approval Date	Sections Modified
1	Office of the CEO	Council	Aug 18, 2007	Created
2	Policy Unit	Council	Nov 19, 2011	Joint development, social networking, definitions, acknowledgement of ownership

**ASSIGNMENT OF INTELLECTUAL PROPERTY**

TO: Australian and New Zealand College of Anaesthetists (“the College” or “ANZCA”)

I, [NAME:  
.....]

of [ADDRESS:  
.....]

in connection with the project

.....  
.....  
.....

(identify project, activity, publication)

agree and acknowledge that ownership of all intellectual property (including copyright) in all materials created for the project will vest in the College.

DATED: 20..

SIGNED: .....