Intellectual Property Policy

Policy Owner	CEO
Approving Authority	Governing Council
Implementation Responsibility	CEO
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1. Purpose

This policy sets out the principles and practices of Sydney Polytechnic Institute (SPI) with respect to the promotion and protection of the development of Intellectual Property (IP) by its staff, students and partners. Matters considered in this Policy include the nature of IP, its ownership, exploitation and the associated specific procedures adopted within SPI to manage IP.

2. Scope

This Policy is applicable to all staff, students and partners of SPI, except where there is a specific written agreement, approved by the Governing Council, providing for alternative arrangements.

3. Definitions

For the purposes of this policy:

Background Intellectual Property (IP) means any IP owned by SPI that exists at the time the new IP is created.

Commissioned Work means a specific work which SPI has directed or requested a staff member to create, over and above the staff member's usual teaching, administrative or other duties, and includes a work created where the staff member is remunerated over and above the staff member's usual salary. A commissioned work may include course work, creative works or scholarly works.

Commercialisation means the process of developing and applying science, technology, research or an invention into a product, service or process which may also include the exploitation of, or dealing in, IP for the purpose of generating a commercial return or benefit.

Confidential Information includes commercially valuable information and trade secrets but it may also extend to personal information as well as secret or sacred information usually communicated by indigenous people.

Copyright means all rights in the nature of copyright pursuant to the Copyright Act, including literary works, course materials, dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances.

Course Materials means materials used in a course for the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, and other teaching activities conducted by SPI, and includes, but is not limited to, overhead transparencies, slides, photographs, maps, diagrams, handbooks, manuals, course outlines, exercises, computer programs and multimedia works that serve a teaching function.

Course of Employment includes any work undertaken by a staff member within the scope of duties described in the staff member's contract of employment, duty statement, position description, external consultancy or other work carried out on behalf of SPI, work which may be inferred as in the course of employment by reason of the use of SPI resources or SPI's name or by the involvement of other SPI employees.

Creative Work means works of a purely artistic or aesthetic nature (such as paintings and sculpture), and which are not otherwise included in the definition of 'Scholarly Works' under this policy.

Creator means any of the following:

- in the case of a patentable invention subject to the *Patents Act 1990* (Cwlth): the inventor;
- in the case of a literary or artistic work or similar subject to the *Copyright Act 1968* (Cwlth): the author;
- in the case of designs registrable under the *Designs Act 2003* (Cwlth): the designer;
- in the case of circuit layouts, under the *Circuits Layouts Act 1989* (Cwlth), the designer;
- in the case of software and computer code: the software author; and
- in the case of trade secrets and know how: the contributors to that body of knowledge.

Intellectual Property (IP) means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of inventions, copyright, trade marks, designs, patents, plant breeder's rights, circuit layouts, know-how, trade secrets and all other rights as defined by Article 2 of the *Convention establishing the World Intellectual Property Organisation of July 1967,* all rights to apply for the same and, for the avoidance of doubt, includes:

- Patents under the *Patents Act 1990* (Cwlth.);
- Copyright and moral rights vesting by virtue of the *Copyright Act 1968* (Cwlth.) in literary works (including computer programs), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances;
- Trade marks registered under the *Trade Marks Act 1995* (Cwlth);
- Designs registered under the *Designs Act 2003 (Cwlth)*;
- New plant varieties under the *Plant Breeder's Rights Act 1994* (Cwlth);
- Circuit layouts (computer chips) under the *Circuit Layouts Act 1989* (Cwlth); and
- Trade secrets and other confidential material under Common Law.

Moral Rights means rights of the creators of IP in accordance with the Copyright Act 1968 (Cwlth.). These include the right of fair attribution of authorship or invention, the need for work not to be altered or used in such a way that it harms the reputation of the creator, and an opportunity for the creator to be involved in determining the final outcome of their labours.

Pre-existing IP means tangible IP that SPI agrees is owned by a staff member or a student prior to the date of their employment or enrolment at SPI.

Scholarly Works means works, such as scholarly books, articles, musical and dramatic works, but does not include works that are course materials.

Student means any person currently enrolled or enrolled at the time of the creation of intellectual property, in any degree, diploma, award course, subject or unit offered by SPI whether on a full-time or part-time basis, or at an undergraduate or postgraduate level.

4. Ownership of Intellectual Property

4.1 General principles

SPI owns and manages intellectual property in order to encourage and facilitate its use for the benefit of both the Institute and society. In order to implement this principle, SPI may invest in, and actively pursue the registration of, its intellectual property and may enter into commercial agreements, including licences and assignments, that authorise others to use that intellectual property.

4.2 Ownership of IP developed by SPI staff and affiliates

Except as otherwise agreed in writing by the CEO, SPI owns all intellectual property created or generated by academic, professional, technical or administrative staff and affiliates in the course of, or in connection with, their employment with the institute and as a consequence of

- the use of SPI resources and generated as a result of any funding provided by or obtained by SPI;
- participation in any project or program supported by funding obtained or provided by the institute;
- a course of research being undertaken at the institute, either in collaboration with other staff members or any third party; or
- generation of the IP resulted from the use of Background IP owned by the SPI.

4.2 Ownership of IP developed by SPI students

SPI does not assert ownership of IP created by students unless the IP:

- consists of teaching materials; and/or
- has been separately assigned to SPI under a specific agreement with the student; and/or
- has been jointly developed with SPI staff and where the student is deemed to be a co-creator; and/or
- is the subject of an existing agreement between SPI and a 3rd party (e.g. industry-sponsored research programs).

4.3 Ownership of IP developed by SPI students who are also SPI staff

Except as otherwise agreed in writing by the CEO, or as stated in this Policy, SPI asserts legal and beneficial ownership of IP developed by students who are also staff where the IP has been developed as a result of their employment as outlined in clause 4.2.

4.4 Ownership of pre-existing IP

SPI does not assert ownership over pre-existing IP. Staff and students must advise the CEO of the existence of pre-existing IP that a staff member or student brings to the institute within 30 days of their employment or enrolment. If no such advice is received by the CEO then any IP developed or disclosed during the period of employment or enrolment will be treated as SPI owned IP.

4.5 General principles regarding publications and authorships

Consistent with the principles and responsibilities of the *Australian Code for the Responsible Conduct of Research*, SPI supports and maintains publication and authorship policies that facilitate the recognition of significant intellectual or scholarly contribution to a research output that is:

- an honest reflection of contribution to research
- assigned fairly, and consistently with established disciplinary practice; and
- communicated clearly and transparently between contributors to the research.

Authors of research outputs are those, and only those, who have made a significant contribution, intellectually and/or scholarly, to the research and its output and have agreed to be listed as an author to the publication or authorship.

SPI recognises that significant intellectual or scholarly contribution must include at least one and should, where reasonably possible, include a combination of two or more of the following:

- conception and design of the project or output
- acquisition of research data where the acquisition has required significant intellectual judgement, planning, design, or input
- contribution of knowledge, where justified, including Indigenous knowledge
- analysis or interpretation of research data
- drafting significant parts of the research output or critically revising it to contribute to its interpretation.

All listed authors are collectively accountable for the whole research output. An individual author is directly responsible for the accuracy and integrity of their contribution to the output. Authors should have confidence in the accuracy and integrity of the contributions of their co-authors.
Authorships will be formalised in evidence of agreement among the authors including

- identification of those who will be recognised as the authors of the research output;
- a description of the contribution that each author has made (or will make) to the research output;
- an indication of the order in which the authors appear. The agreed order of authors should be consistent with any applicable disciplinary norms and publication requirements; and
- identification of at least one corresponding author who is responsible for communication with the publisher and managing communication between the co-authors.

4.6 Ownership of scholarly works and course materials

Subject to clause 4.7, SPI does not assert ownership of any IP in scholarly books, journal articles, course materials, or other scholarly works or subject matter generated (whether in written or any other form) by staff or students, except where the work is:

- specifically commissioned by SPI; or
- produced with the assistance of SPI resources.

Subject to the above exclusions, the ownership of IP in scholarly books, articles, course materials, or other scholarly works or subject matter generated is retained by the creator.

4.7 Assignment of Licence to scholarly works and course materials

The creator must grant to SPI a perpetual, royalty free, non-exclusive licence to use such scholarly books, journal articles, course materials, or other scholarly works or subject matter generated by that creator for SPI's teaching and research purposes. The non-exclusive licence to use such scholarly books, journal articles, course materials, or other scholarly works or subject matter persists should the creator leave the employment of SPI.

4.8 Ownership of course materials specifically commissioned by SPI

SPI asserts legal and beneficial ownership of all course materials which are specifically commissioned or created in the course of employment. SPI may, at its discretion, give the Creator(s) of Specifically Commissioned Course Materials a non-exclusive licence to use the Course Materials for teaching

purposes, provided that such a licence will not extend to the use of the Course Materials for any purpose which is in direct competition to SPI.

Where SPI does not wish to commercialise Specifically Commissioned Course Materials and advises the Creator(s) accordingly, the Creator(s) may request the assignment of the ownership rights of those Course Materials to the Creator(s) or any one of them. SPI will retain a non-exclusive licence for educational purposes.

5. Commercial exploitation of IP owned by SPI

5.1 General principles

SPI may use reasonable endeavours to commercialise IP that it owns and considers suitable for commercialisation. The process of commercialisation may be undertaken in collaboration with the creator(s) of the IP and in accordance with this policy. It will be the decision of SPI, in its absolute discretion, whether to proceed with, continue, or exit from commercialisation activities. If SPI elects not to commercially develop IP it owns, the ownership of such IP is assigned to the creator(s).

5.2 Distribution of financial benefit

If SPI commercialises any IP it owns, it will distribute a share of net commercialisation revenues to creators that have a recognised interest in the IP that has earned that revenue. Net commercialisation revenues and financial benefit from the management of specific university owned intellectual property will be allocated as follows:

a) SPI to recover all costs incurred by the Institute in relation to the management of that intellectual property.

b) where the costs incurred by SPI in managing the intellectual property are fully recovered, the net financial benefit will be shared in accordance to the following:

- 50% to be shared among all the creators (staff members, and/or students); and
- 50% to SPI for its general purposes, with the expectation that it will be used to foster research and teaching & learning.

Notes

Related Documents:

SPI Student Code of Conduct Policy
SPI Student Complaint and Grievance Resolution Policy and Procedure
SPI Staff and Affiliates Code of Conduct Policy
SPI Staff Complaint and Grievance Resolution Policy and Procedure
SPI Conflict of Interest Policy

Amendment History:

Version No.	Approved by	Effective date	Amendments

1.0	Governing Council	27/08/2021	New Policy