

# AIE Institute Intellectual Property Policy and Procedure

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## 1 Purpose and Scope

The purpose of this policy and procedure is to promote the development and commercialisation of knowledge generated in connection with teaching and scholarly activity at AIE Institute in accordance with the Intellectual Property License Agreement (IPLA).

It describes the principles of ownership, licensing, management, commercialisation and use of Intellectual Property (IP) created by AIE Institute staff, visitors, contractors, and students.

This policy and procedure applies to all AIE Institute staff, visitors, contractors, and students.

## 2 Objectives

AIE Institute is committed to:

- a. Supporting staff and students in their entrepreneurial and commercial endeavours
- b. Establishing mechanisms for the identification, protection, management and commercialisation of IP created by students
- c. Facilitating engagement with external industry partners and ensuring that AIE Institute IP is utilised for maximum benefit to AIE Institute
- d. Identifying and managing risks associated with commercialisation.

## 3 Implementation

The CEO has overall responsibility for the implementation of this policy and procedure, in particular with licensing and commercialisation. The Academic Director is responsible for the implementation of this policy and procedure with regard to the generation of educational resources, teaching and scholarly activity.

### 3.1 Scholarship and the creation of Intellectual Property (IP)

Scholarship activities are a core component to AIE Institute which benefit the needs of AIE Institute, staff and its students. The outcome of scholarship is the distillation of new or improved knowledge, appreciation or insights into teaching & curriculum and other elements of academic operations. Scholarship activities are also vital building blocks in helping to create internal capacity within AIE Institute that up-skills existing faculty so as to improve their knowledge and skills.

Staff who possess appropriate skills and expertise are involved in the continuous improvement and development of curriculum and other projects at AIE Institute. Staff chosen to undertake project development allocations are supervised by the Academic Director to ensure that both parties are able to learn and acquire new skills and, in the process, either advance knowledge or professional practice in a field or contemporary pedagogy.

Importantly, Scholarship activities carried out in conjunction with external industry partners enable the creation of AIE Institute IP which can be commercialised and generate a revenue stream for the benefit of AIE Institute. AIE Institute encourages its staff to engage in valuable IP industry partnership.

## 4 Procedure

### 4.1 Approach

AIE Institute's approach to scholarship is underpinned by the following tenets:

- a. A Creative work is accepted as scholarly equivalent if it supports the creation of new knowledge and/or the use of existing knowledge in a new and creative way so as to generate new concepts, methodologies and understandings
- b. AIE Institute distinguishes between (i) professional practice and (ii) scholarly practice; the first being necessary to provide the maintenance of expertise and knowledge to carry out the latter.

The Board of Directors may inform the direction and focus of AIE Institute's scholarship activities, including in conjunction with external industry partners.

### 4.2 Ownership of intellectual property

#### 4.2.1 Staff IP ownership

Intellectual property created in pursuit of or incidental to the performance of a staff member's employment contract at AIE Institute is considered to have been created in the course of employment whether or not a staff member's express duties include a duty to develop IP. As such AIE Institute owns all IP created by staff in the:

- a. Course of their employment with AIE Institute
- b. Course of using funding, facilities or resources of AIE Institute
- c. Conduct or creation of any works commissioned by AIE Institute via separate agreement, other than the contract of employment, unless agreed otherwise which vests in AIE Institute at law.

In the case of scholarly works created by staff, AIE Institute assigns staff the right to publish such work subject to a perpetual, world-wide, royalty free, non-exclusive licence in favour of the Institute, consistent with their contract of employment.

All staff, contractors and contributors to AIE Institute IP with commercialisation potential must identify, keep confidential, be involved in and facilitate the commercialisation of IP. In particular, all staff have a specific duty to fully disclose to AIE Institute IP with potential commercial value, to the Academic Director in the case of education resources or to AIE Institute's CEO in the case of other AIE Institute IP.

Any distribution to staff from net commercialisation revenue received from commercialisation of education resources will be determined by the Board of Directors.

Commercialisation of AIE Institute IP (other than education resources) will be pursued by the CEO who will have the specific function of protecting and commercialising IP developed at AIE Institute and supporting staff in the recognition and identification of commercialisable IP.

AIE Institute consents to the use of AIE Institute education resources by staff to fulfil their teaching, research and training responsibilities at AIE Institute. This use does not include any use for commercial purposes, nor does it involve a transfer of ownership of AIE Institute IP.

Unless subject to a confidentiality or separate legal constraint, AIE Institute recognises that staff may personally use knowledge they have developed in the course of their employment at AIE Institute, once that employment ceases. That right does not extend to the reproduction of AIE Institute education resources

#### 4.2.2 Student IP ownership

An objective of this policy and procedure is to establish mechanisms for the identification, protection, management and commercialisation of IP created by students.

The majority of IP generation happens in a highly peer-influenced and/or collaborative team environment. A significant amount of work created by students in a learning context is often based on the original IP of others, including reference material from textbooks, DVDs, internet resources and work created by their teachers.

A number of students will likely create IP for a particular project, such as source code, game design, music, 3D models, textures, animations other elements of a game that will generally attract copyright protection.

The commercialisation of IP that has a number of different owners can give rise to practical and legal difficulties. IP can be most effectively commercialised if its ownership can be easily identified and that IP is properly managed. This should ideally be done through one central entity.

AIE Institute aims to have a system that ensures that the IP created by students is captured and consolidated under one owner, AIE Institute. This IP can then be transferred by AIE Institute to a business run by students or graduates of AIE Institute, who wish to continue to commercialise it wherever possible. This approach reduces the risk of claims by other students that they own any of that IP. Without this structure in place, a graduate student business could face real risks of IP claims from other students.

This will assist with the:

- a. Attraction of industry and government funding
- b. Generation of financial returns for businesses of graduates of AIE Institute
- c. Ability for graduates of AIE Institute to benefit as much as possible from the IP they create.

Accordingly, AIE Institute requires an individual student to sign an assignment agreement, assigning IP they create to AIE Institute. This policy forms part of the terms and conditions of each student's enrolment at AIE Institute.

The Australian *Copyright Act 1968 (Cth)* provides for the protection of the "moral rights" of the author (i.e. creator) of a copyright work. These "moral rights" are the rights of the author to be recognised as the author of a work, the right for authorship not to be attributed to someone else and the right to object to the derogatory treatment of a work. These personal rights cannot be assigned or licensed, and can only be waived. Whilst AIE Institute will endeavour to attribute authorship wherever commercially practicable, AIE Institute requires a waiver of the moral rights of each student, and their consent to the infringement of their moral rights, to simplify the commercialisation of the IP. Following the assignment of the IP to AIE Institute by a student, AIE Institute still permits that student to use any of that IP, for non-commercial use solely for promoting their skills and talent.

AIE Institute will sign over IP created where the following conditions can be met:

- d. The student and/or graduate can prove that they were the primary originators of the IP
- e. The student and/or graduate agrees to acknowledge all creators of the original IP
- f. The student and/or graduate agrees to re-author any work associated with the IP that was created with educational versions of software
- g. The student and/or graduate provides details of their registered business which will become the owner of the IP.
- h. The student has produced a research output as part of the requirements e.g. thesis for meeting the award of a qualification

AIE Institute retains the right to exclusively use any student work, photos, moving imagery or testimonials for marketing, promotional and related activities. Students may choose to opt-out of appearing in photos or moving imagery.

In order to participate in certain work integrated learning activities, students may be requested to assign their IP to industry partners as part of an internship agreement. Assignment of student IP to AIE Institute will also be required for a student to work on an AIE Institute project as part of their coursework assessment (i.e. student collaboration projects such as group work).

Where a student assigns IP to AIE Institute and the IP is commercialised by AIE Institute, the student will be deemed a creator for the purposes of the Intellectual Property Protection and Commercialisation Procedure.

Where a staff member is also a student, AIE Institute owns all IP created by the staff member and takes precedence over their role as a student.

#### **4.2.3 Visitors IP ownership**

AIE Institute does not, as a matter of course, assert ownership of IP created by visitors. However, where the visitor is working as part of a project activity, and in particular where the activity is externally funded, AIE Institute may require the visitor to agree to an IP arrangement in line with project requirements in order to become involved, or continue involvement in the activity.

For avoidance of doubt, when a previous staff member transitions to, or returns to AIE Institute as a visitor or student, IP previously created by them as staff will remain owned by AIE Institute.

Provisions to properly manage background IP or AIE Institute IP to be used should be agreed and documented in a separate written agreement.

### **4.3 Licensing of education materials, scholarly works and creative works**

#### **4.3.1 Education materials**

AIE Institute asserts ownership of IP in education materials generated by staff, students, visitors or contractors except where the work is specifically commissioned by AIE Institute through a separate agreement (for example, outside the scope of an employment contract).

### **4.4 Background intellectual property**

Any staff, visitors, contractors, and students must inform AIE Institute of any background IP they wish to use in any project or activity prior to the commencement of that activity. The staff, visitors, contractors, and students must not use background IP owned by themselves or third parties, in work related to AIE Institute until there is a written agreement in place regarding AIE Institute's rights in respect of that background IP.

### **4.5 Joint intellectual property**

Intellectual property can sometimes be owned jointly by two or more parties, where all parties have contributed jointly to creation of the IP. Where a student or visitor, has not assigned ownership of IP to AIE Institute, and the student or visitor and another party have created joint IP, all parties must reach written agreement on any dealings with that IP.

For students, IP arrangements with external advisors and other collaborators will be agreed in writing with AIE Institute (generally through a paragraph in the letter of invitation that clearly outlines IP ownership and licensing, or a term sheet).

### **4.6 Moral rights**

AIE Institute recognises the moral rights of the creators of works in which copyright subsists in accordance with the *Copyright Act 1968 (Cth)*. These rights include the right of attribution of authorship, the right that a work not be falsely attributed and the right of integrity of authorship (that a work not be unreasonably treated, altered or used in such a way that it harms the reputation of the creator).

AIE Institute will, wherever possible, protect the moral rights of staff, students, visitors particularly where the specified acts may affect academic standing or the proper attribution of academic work intended for open publication. If necessary, under an agreement between AIE Institute and a third party, the creator

may be requested to provide a written consent to specified acts with respect to their moral rights in works created pursuant to such third party agreement.

#### 4.7 Confidentiality obligations

Staff, visitors, contractors, and students must not act in a manner which would result in:

- i. The loss of the opportunity to protect or commercialise AIE Institute IP
- j. AIE Institute being in breach of its obligations to third parties concerning IP.

#### 4.8 Execution of documents

A creator must, as required by AIE Institute, execute all documents and do all acts that may be necessary or desirable in a timely manner to give full effect to the provisions of this policy and procedure.

## 5 Definitions

**AIE Institute IP** means intellectual property owned by AIE Institute in accordance with the Intellectual Property Policy and Procedure and includes IP referred to in the Intellectual Property License Agreement (IPLA).

**Background confidential information** means any data or information which a student, staff, visitor, or contractor is legally obliged to treat as confidential. An example of this could be as a result of the terms and conditions of a previous employment contract, or a non-disclosure agreement or Work Integrated Learning Agreement.

**Background intellectual property** means any IP owned by a student, staff, visitor, or contractor that is licensed to them from a third party, which may be used while the student, staff, visitor, or contractor has a connection with AIE Institute.

**Commercialise** means to exploit commercially and includes:

- a. In relation to an IP right; the exercise of all the rights exclusively granted to the holder of such IP rights by the laws of the jurisdiction in which the IP right subsists, including where permitted the right to sub-licence those rights
- b. In relation to a product, kit, apparatus, substance, documentation or information resource (or any part of such materials): to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of it
- c. In relation to a method or process: to use the method or process or to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of a product, kit or apparatus the use of which is proposed or intended to involve the exercise of the method or process.

**Commercialisation** – similarly defined to commercialise.

**Creative work** means an artistic, literary, musical, dramatic, film, sound, video game, game engine, software library, multimedia work, performance, diagram, map, chart, photograph or other creative work in which copyright subsists (irrespective of the medium in which the work is recorded).

**Creator** means any staff, visitor, contractor, and student who contributes to the creation, development or invention of any IP whether or not in conjunction with other persons.

**Education material** means all materials produced by staff, visitors, contractors, and students for use in, teaching at AIE Institute (for example, lecture notes and material, syllabi, handouts, study guides, course software and assessment materials) regardless of format (for example, printed, digital, electronic, multimedia presentations and web content), but excludes personal lecture notes that are not made available to

students or personal notes taken by students to assist in study. To the extent a work may be both education materials and a Scholarly Work, it will be treated in this Policy as education materials.

**Intellectual property** (IP) means any and all industrial and intellectual property rights (whether or not registered or registrable or having to undergo any other process for grant, registration or the like) including rights in respect of:

- a. Literary, artistic, musical and dramatic works in which copyright subsists (including future copyright)
- b. Field and laboratory notebooks
- c. Video game, video game engines, tools, crypto related engines or routines, software libraries, databases, computer software and related material not otherwise coming within any of the other designated items of IP
- d. Cinematographic and multimedia works in which copyright subsists (including future copyright)
- e. Performances of performing artists, sound recordings and broadcasts
- f. Patentable and non-patentable inventions (including granted patents and patent applications)
- g. Registered and unregistered designs, plant varieties and topographies
- h. Circuit layouts and the like
- i. Registered and unregistered trademarks, trademark applications, service marks and commercial names and designations
- j. Scientific discoveries
- k. Confidential information, trade secrets and know-how and other proprietary information associated with any of the other designated items of intellectual property
- l. Any other intellectual property rights as defined in Article 2 of the Convention (Dated 14th July 1967) establishing the World Intellectual Property Organisation (as amended from time to time).

**Moral rights** has the meaning set out in the *Copyright Act 1968 (Cth)*.

**Net commercialisation revenue** means all gross revenue minus without limitation all commercialisation expenses including costs of AIE Institute out of pocket expenses, third-party out-of-pocket distribution and sales, all third party participations, fees, bonuses, financing costs, loan repayments and interest arising from commercialisation activities.

**Scholarly works** means copyright works that are created intended for collaborative industry related development, whether or not in collaboration with AIE Institute, and all academic publications (for example, any article, book, manuscript, or manual) and have been peer reviewed, regardless of format (for example, printed, digital or electronic versions) created by staff, visitors, contractors, and students.

**Staff** means the officers and employees of AIE Institute, and includes academic, professional, technical and administrative officers and employees.

**Student** means any student enrolled in an approved course at AIE Institute, or in a course or program of study conducted by or on behalf of AIE Institute.

**Visitor** includes any person given access to AIE Institute resources for the purposes of undertaking academic study, education, research or development, whether or not in collaboration with AIE Institute. For the avoidance of doubt, this policy applies to visitors during the period of their time at AIE Institute, and beyond where IP was generated during their time at AIE Institute.

## 6 Related Documents

The following policies and procedures are related to this policy:

- a. Intellectual Property License Agreement (IPLA)
- b. Staff Professional Development and Scholarship Policy and Procedure

## 7 Review

Three years from commencement.

## 8 Accountabilities

The Board of Directors is responsible for review and approval of this policy and procedure.

## 9 Revision History

| Approval authority      | Contact person   | Revision due date | Revision date | Approved date | Version no. | Revision description  |
|-------------------------|------------------|-------------------|---------------|---------------|-------------|---|
| Board of Directors      | Chair            |                   |               |               |             | New document  |
|                         |                  | 01/01/2023        |               | 12/12/2019    | 1.0         | BoD Approved  |
| Board of Directors      | Chair            |                   | 27/09/2023    | 06/10/2023    | 1.1         | Changed wording under Staff IP Ownership                        |
| <b>Drafting details</b> |                  |                   |               |               |             |   |
| Prepared by             | Preparation date | Revised by        | Revision date |               | Draft no.   | Revision description  |
| John De Margheriti      | 20/11/2019       |                   |               |               | 0.01-0.03   | Initial drafting  |
|                         |                  | Casey Gregory     | 29/11/19      |               | 0.04        | Changes requested at 22 Nov 2019 BoD meeting.                   |
|                         |                  | HL                | 2/12/19       |               | 0.05        | Apply AIE Institute style and amend order of headings.          |
|                         |                  | JDM               | 9/12/19       |               | 0.06        | Insert details of student IP ownership                          |
|                         |                  | HL                | 10/12/19      |               | 0.07        | Formatting and minor text amendments                            |
|                         |                  |                   |               |               | 0.08        | Implemented changes requested at BoD 12-Dec meeting and format. |