



**RANZCO**

The Royal Australian  
and New Zealand  
College of Ophthalmologists

# Intellectual Property Policy

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## 1. Introduction

RANZCO regularly creates, acquires and uses contents and materials that may be protected by intellectual property (IP). The contents and materials may be:

- created by employees, members, affiliates or consultants of RANZCO;
- created at the specific request or direction of RANZCO, including in projects commissioned by RANZCO (whether on a funded or voluntary basis),
- created in the course of RANZCO's procurement of goods or services, or
- acquired specifically by RANZCO from another party (e.g. under a licence agreement or by the grant of consent to use the IP for a particular purpose).

IP is a strategically and financially valuable asset for RANZCO and, like any other resource, it should be carefully managed.

### 1.1. Objectives

The primary objectives of this IP Policy are to:

- ensure RANZCO has appropriate rights in the IP created by employees of RANZCO;
- ensure RANZCO seek adequate rights in the IP created by members of RANZCO, affiliates (including special committee members formed by RANZCO), consultants or IP acquired from third parties;
- provide clear guidance to RANZCO staff on RANZCO's preferred approach for managing, using and making decisions with respect to IP; and
- describe some specific rights and obligations of RANZCO employees, members, affiliates and consultants in relation to IP.

### 1.2. What is Intellectual Property?

**Intellectual property** or **IP** is a term used to describe the legal rights which may attach to the results of creative efforts of the mind or intellect. These rights are not granted to reward the creation of a physical object, but the intellectual effort applied to its creation.

Generally, IP law provides a creator of IP with legal rights to control the use of the IP for a certain period of time, to the exclusion of others.

Some examples of IP in subject matter that is regularly created, acquired or used by RANZCO include:

- **copyright** in literary and artistic works (e.g. teaching and other written materials, education papers, policies, publications, photos, images and drawings);

- **copyright** in software;
- **trade marks** (whether registered or unregistered) for words, slogans, logos and shapes used to distinguish RANZCO's services and goods from those of another entity;
- **domain names** (a sequence of letters for an internet protocol address); and
- **confidential information** received or created by RANZCO staff, members, affiliates or consultants. Personal information is a form of confidential information. Refer to RANZCO's Privacy Policy for handling, using and maintaining personal information.

A **glossary** of common terms related to IP is set out in **Section 7** Glossary of this Policy.

## 2. Creating and Acquiring IP

### 2.1. Employees

IP is created on a day to day basis by employees of RANZCO. RANZCO generally owns the rights to any IP developed by RANZCO employees which is created in the normal course of employment.

RANZCO employees must assign all rights, title and interest (if any) in the IP created by them with effect from the creation of the IP and will sign all documents to confirm RANZCO's ownership of such IP.

RANZCO employees should strictly observe requirements to keep information confidential. Unauthorized disclosure may, in some circumstances, breach RANZCO's existing obligations, or it may destroy the commercial value of the IP.

RANZCO employees must not use any IP or confidential information gathered from their previous employment, unless express written permission has been obtained from their previous employer to do so.

### 2.2. RANZCO Members, Affiliates and Consultants

RANZCO members, affiliates (including members of committees formed by RANZCO) and consultants do not have an employment relationship with RANZCO. When engaging members, affiliates and consultants (whether on a specific task or generally), IP issues should be clearly communicated to the member, affiliate or consultant (including in any reference document) and must be addressed in a written agreement. Generally, if IP issues are not addressed, the default position under Australian law is that the IP rights will be vested in the member, affiliate or the consultant and RANZCO will receive an implied licence to use the IP for its intended purpose only.

See **Section 2.3** Dealing with IP Rights in Contracts below with respect to the IP considerations that will need to be addressed.

### 2.3. Dealing with IP Rights in Contracts

When acquiring IP from third parties (including engaging RANZCO members, affiliates or consultants to create IP or deliver a service which involves IP), it is important that RANZCO considers:

- RANZCO's needs and objectives for acquiring the IP;
- whether existing IP under RANZCO's control or custody may satisfy the identified needs and objectives and avoid duplication; and
- seeking appropriate and adequate rights in the acquired IP for RANZCO's intended purpose.

IP positions in agreements may be structured in a number of ways. However, RANZCO should consider the following issues in all projects involving the creation or acquisition of IP and ensure these are reflected in agreements:

- ownership of IP and rights to use (see **Section 2.4** for more information);
- attribution (i.e. moral rights) (see **Section 2.5** for more information);
- confidentiality; and
- IP warranties (e.g. as to ownership and infringement).

### 2.4. Ownership and Rights of IP in Contracts

IP ownership should be considered on a case by case basis. Depending on the circumstances, RANZCO may:

- seek full ownership of the IP;
- agree to jointly own the IP with another party; or
- seek a licence to use the IP to suit its needs.

If RANZCO has specifically commissioned the creation of a work, RANZCO will generally take the position that IP in the work is to be owned by RANZCO, in which case, RANZCO should seek assignment of such IP in writing. Please see the template for RANZCO's IP assignment for copyright works created by an individual. Please seek advice from the Head of Corporate Services if you are unsure how such IP assignment may be completed and executed. Seek professional advice if RANZCO needs to secure assignment of other forms of IP (including IP in software) or if assignment of IP needs to be provided by an organisation, an institution or a corporate entity.

Since joint owners of IP may have different rights dependent upon the nature of IP and the jurisdiction in which they are exercising those rights, prior to RANZCO agreeing to jointly own IP with another party, RANZCO staff should carefully consider how the joint ownership is to be managed and ensure RANZCO has the necessary rights to use the jointly owned IP for its purpose. In some circumstances, where RANZCO has agreed to jointly own IP with another party, RANZCO may still need to review and seek consent from its joint owner to use the IP.

On some occasions, the RANZCO member, affiliate, consultant or the third party may re-use its existing work to deliver a work product for RANZCO. In this case, it may be impossible or impractical for RANZCO to seek ownership on the IP for the work and RANZCO should ensure that it has adequate rights to use the IP for its purpose (even though ownership of such IP vests in the third party). Please see the template for RANZCO's IP licence for copyright works created by an individual. Please seek advice from the Head of Corporate Services if you are unsure how such IP licence may be completed and executed. Seek professional advice if RANZCO needs to secure licence of other forms of IP (including IP in software) or if the IP licence needs to be obtained from an organisation, an institution or a corporate entity.

If RANZCO is reproducing or broadcasting contents that include the image or voice of a person, RANZCO should seek a model release from the person. Please see the template for RANZCO's model release form. Please seek advice from the Head of Corporate Services if you are unsure how such image release may be completed and executed.

Examples of scenarios for which different ownership position that may be adopted by RANZCO are set out in Appendix A.

## **2.5. Moral rights and attribution of authors**

RANZCO should consider the issue of attribution of authors on a case-by-case basis, in considering attribution, RANZCO should be aware that:

- if the author has not signed a moral rights consent for a particular piece of work, the author has moral rights to require RANZCO to attribute authorship to him or her; and
- attribution of authorship does not affect ownership of IP on the relevant work.

If RANZCO considers that it is inappropriate to provide attribution to an author for a piece of work due to, for example, the nature of the work, then RANZCO should ensure that it obtains a moral rights consent from the relevant author. RANZCO should never attribute authorship of a work to a person who is not the author or derogate a piece of work that affects the honour or reputation of the author.

Please see the template for RANZCO's moral rights consent, seek advice from the Head of Corporate Services if you are unsure how such moral rights consent may be completed and executed.

### **3. Identifying and Recording IP**

RANZCO will identify and manage IP under its control or custody where the IP is important for the achievement of RANZCO's objectives, such as where the IP:

- contributes materially to the achievement of RANZCO's objectives;
- results from the investment of material RANZCO resources; or
- is owned by or is subject to rights held by another party.

RANZCO staff who generates or acquires IP from members, affiliates, consultants or third parties that meets the above threshold will notify the Head of Corporate Services and provide all relevant information. The Head of Corporate Services will keep a record of such IP in the IP register and will be responsible for keeping the IP register up to date.

### **4. Protecting RANZCO IP**

RANZCO will protect IP (whether created internally or acquired) where such protection is necessary to:

- preserve the inherent value of the IP that warrants such protection;
- prevent inappropriate use of the IP by another party, or
- maintain RANZCO's reputation.

In particular, RANZCO will protect IP in an appropriate manner where the IP is important to the operations of RANZCO, such as where the IP:

- contributes materially to the achievement of RANZCO objectives;
- results from the investment of material RANZCO resources; or
- is or may be included in commercialisation activities.

IP protection may take a number of forms depending upon the nature of the IP and the objectives and resources of RANZCO.

#### **4.1. Registrable forms of IP**

IP protection, particularly for registrable forms of IP (such as patents, design registrations and trade marks), is a technically difficult area. RANZCO staff are encouraged to seek advice from IP professionals in making protection decisions and implementing protection strategies for formal protection of IP.

## 4.2. Non-registrable forms of IP

Some forms of IP protection may arise automatically without the need for formal registration, for example, copyright. RANZCO creates and acquires a large number of copyright works and RANZCO staff should always consider implementing practical mechanisms for the protection of IP that does not require registration.

When producing and making publications or videos (whether hardcopy or electronic form) available to another party (including its members), RANZCO must ensure that:

- the material is appropriately protected, and
- the recipient is informed that the material is owned by RANZCO and should not be misused.

This may be achieved in a number of ways.

### *Technological protection measures*

RANZCO encourages the adoption of appropriate technological protection measures, such as read-only access or low resolution images, to protect RANZCO copyright materials that are made available online.

### *Applying Copyright Notice*

A copyright notice must be applied to all copyright materials created or owned by RANZCO so users are informed that the publication is protected by copyright, owned by RANZCO and that consent may be required before they are allowed to use it.

Where appropriate, RANZCO may limit how the published material is to be used by imposing conditions, such as restricting the use of material to non-commercial use. An example copyright notice is provided below. The Head of Corporate Services must be consulted when applying the appropriate copyright notice and appropriate conditions of use for publications.

#### **Example – Copyright Notice**

Copyright © [Insert year] The Royal Australian and New Zealand College of Ophthalmologists (RANZCO). All rights reserved. This document (whether in print or electronically) is only intended for personal use by its intended recipient and any implied licence to use any part of these works is expressly excluded. No part of this document may be reproduced, modified, published, distributed or transmitted in any form or by any means without the written consent of RANZCO.

### *Confidential Information*

RANZCO staff, members, affiliates and consultants must treat all RANZCO Confidential Information in the strictest confidence and must maintain its confidentiality (including by instituting effective security measures) in accordance with any RANZCO policies or contractual obligations.

## 5. Using and Sharing RANZCO IP

When using RANZCO IP, RANZCO staff, members and affiliates should do so in accordance with RANZCO's objectives and applicable guidelines. In particular, RANZCO staff should follow (and ensure any third party who has permission to use RANZCO's IP follow) relevant guidelines when using RANZCO's IP (including education materials and trade marks).

All copyright materials that is made available to its members and affiliates should be protected in accordance with Section 4.2.

If RANZCO staff becomes aware of any possible inappropriate use of its IP, it should, in consultation with the Head of Corporate Services act promptly to consider appropriate action to prevent such use. Seek advice from IP professionals where appropriate.

## 6. Using and Sharing IP of another party

RANZCO must only use IP belonging to another party where it has the right to do so and in accordance with any conditions attached to the rights granted.

RANZCO staff must review RANZCO's IP records and source documents to ascertain the terms and conditions applicable to RANZCO's use of IP belonging to another party which is in RANZCO's control or custody.

RANZCO staff must obtain further authorisation from the appropriate third party if RANZCO proposes any use beyond the rights already granted to use the IP.

RANZCO treats the issue of IP infringement seriously. RANZCO must act in a way that does not jeopardise RANZCO when dealing with allegations of IP infringement and which protects against inappropriate use of RANZCO's IP by another party. If there is a claim of infringement, RANZCO staff should ensure the alleged claim is immediately notified to the Head of Corporate Services and the CEO. RANZCO staff must not respond in any way to the alleged infringement without first obtaining legal advice.

## 7. Glossary

### Confidential Information

Confidential information refers to information of a confidential nature that is not available in the public domain. Confidential information in this context is not protected by statute, but by common law and equity.

### Copyright

Copyright is a form of intellectual property that protects the expression of an idea, but not the idea itself, such as literary works, dramatic works, musical works, artistic works, films, sound recordings, broadcasts and published editions. Copyright in Australia is governed by the *Copyright Act 1968* (Cth) and is generally granted automatically upon creation of an original work.



<b>Copyright Notice</b>	A copyright notice indicates that a work is protected by copyright and identifies the copyright owner. A copyright notice usually consists of the © symbol, the name of the owner and the year of creation or first publication. It may also include conditions applying to use of the copyright work.
<b>Design</b>	A registered design is a form of intellectual property that protects the overall appearance of a new and distinctive design. In Australia, registered designs are governed by the <i>Designs Act 2003</i> (Cth). Design rights are not automatic but require formal registration.
<b>Domain Names</b>	Domain names are sequences of letters which are translations of numeric internet protocol addresses. Domain names are obtained through domain name registrars, and are registered on a first come, first served basis.
<b>Intellectual Property</b>	Intellectual property (IP) is a form of intangible property resulting from creative efforts of the mind or intellect, such as literary, artistic and scientific works, inventions, performances, industrial designs, trade marks and service names, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
<b>IP Rights</b>	Intellectual property rights are the exclusive rights attaching to intellectual property, e.g. grant of rights for copyright, patents, trade marks, registered designs, circuit layouts, plant varieties, and to a lesser extent confidential information (although confidential information is not itself a form of ‘property’).
<b>Moral Rights</b>	Moral rights are a special type of IP rights granted to the authors of copyright works (e.g. written materials, papers, policies, publications, photos, images, drawings and software). Moral rights include an author’s rights to (a) be identified as the author of the work; (b) take action against false attribution; and (c) object to derogatory treatment of his or her work that affects his or her honour or reputation.
<b>Patent</b>	A patent is a form of intellectual property that protects an invention. In Australia, patents are governed by the <i>Patents Act 1990</i> (Cth). Patents require formal registration for protection.
<b>Technological Protection Measures</b>	Technological protection measures ( <b>TPMs</b> ) are technologies aiding the protection of IP works at a technological level by restricting access or the ability to reuse or manipulate, such as password-protection, encryption and read-only access.

## Trade Marks

A trade mark is a form of intellectual property that is a sign used in trade to identify and distinguish goods or services of one trader from those of another. In Australia, registration of trade marks is governed by the *Trade Marks Act 1995* (Cth). Trade marks may be formally registered under the Act for greater protection.

## 8. Review

Page	Details of amendment	Date approved
Not applicable	Not applicable	Not applicable

## Appendix A

The following are some examples of how RANZCO may determine its preferred IP ownership positions:

### Example 1 – Education Materials

An academic employed by a university is delivering a presentation for RANZCO, which is to be recorded and included as webinar in RANZCO's website for education of its members. The academic is using a presentation he created under employment by the university to deliver the webinar, as such IP rights on the presentation would have been owned by the academic (or the university). In this case, it may be inappropriate for RANZCO to insist on owning the IP on such presentation. If the webinar is recorded by RANZCO, copyright on the video will be owned by RANZCO. RANZCO should seek rights from the IP owner (i.e. the academic or the university) to enable RANZCO to publish and broadcast the video (which contains the contents of the presentation) as it sees fit.

### Example 2 – Developing Software

RANZCO is commissioning the development of certain software by a third party software developer. In developing the software, the software developer indicated that it could develop the software *de novo* and assigning the IP to RANZCO, or it could use its existing code in the development of the software and grant a licence to RANZCO to use the finished product. The price for the first option is considerably higher. In which case, RANZCO should consider the option that would best serve its purposes in light of its available resources (including financial resources).

Contracts for procurement of information technology may be complex. The above example only highlights one potential issue. Seek legal advice when appropriate.

### Example 3 – Existing Memorandum of Understanding

RANZCO may have existing Memorandum of Understandings with educational institutions which include provisions to own all IP jointly. When IP is created under arrangements covered by Memorandum of Understandings, the use of such IP is governed by relevant provisions. RANZCO staff should review and adhere to relevant conditions when using the IP.