



Royal Australasian College  
of Dental Surgeons

*Let knowledge conquer disease*

# INTELLECTUAL PROPERTY POLICY

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### ***Document Information***

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## Purpose

The Royal Australasian College of Dental Surgeons (RACDS) recognises that intellectual property is one of its most valuable assets and is an identifier to differentiate it from other organisations. The general use of and dealings involving intellectual property are essential to the RACDS' operations and achievement of its initiatives. Intellectual property, including trade marks, copyright and confidential information, plays a critical role in RACDS' ability to protect its creative and intellectual endeavours, reputation, and goodwill.

The purposes of this Intellectual Property Policy are to:

- a) Secure and protect the intellectual property of the RACDS;
- b) Clarify rights to access and use the intellectual property of the RACDS;
- c) Clarify ownership of intellectual property of employees of the RACDS;
- d) Clarify the permitted use of any of the RACDS intellectual property material by third parties and Members of the RACDS;
- e) Clarify ownership over intellectual property attributable to Members of the RACDS;
- f) Recognise moral rights of original authors/creators; and
- g) Clarify dealings between authors and third parties.

## Definitions

the RACDS / the College / 'we' or 'us'	the company limited by guarantee named Royal Australasian College of Dental Surgeons (ABN 97 343 369 579).
College Materials	means any Materials or any part of Materials in which the RACDS is the owner or joint-owner of Intellectual Property Rights or the RACDS is the licensee of Intellectual Property Rights.
Intellectual Property / Intellectual Property Rights	means all present and future, Australian and international intellectual and industrial property rights conferred by statute, at common law or in equity wherever those rights might arise, including (without limitation) copyright, patent rights, designs, technical or commercial know how, trade marks, circuit layouts, trade secrets, rights in relation to databases and domain names, inventions, innovations, rights to have confidential information kept confidential and all other results of intellectual effort in the scientific, industrial, literary or artistic fields whether or not registered or capable of registration, including any application or registration or right to apply for registration of any of the aforesaid rights, and including any variations, modifications, adaptations and derivatives of any of the aforesaid rights.
Materials	means any works in which copyright or other Intellectual Property Rights may subsist, including but not limited to documents, text, databases, software, designs, graphics,

	photographs, audio-visual recordings, plans, prototypes, compilations, or other material in whatever form.
Members	used collectively, means people designated as Fellows, Members, Affiliate Members, Associate Members or Student Members of the Royal Australasian College of Dental Surgeons in the RACDS Constitution and By-Laws.

## *Policy Statement*

### **1. COPYRIGHT**

- 1.1. Copyright protection covers original forms of expression resulting from an author's intellectual and creative works. Copyright protects only the form or way an idea or information is expressed, rather than the idea or information itself.
- 1.2. In Australia, the copyright law is governed by the Copyright Act 1968 (Cth). Copyright constitutes personal property and there is no system of registration for copyright protection in Australia.
- 1.3. Copyright protection is free and applies automatically once an original work has been fixed in material form (e.g. written down, recorded, or saved on a computer). In addition, recordings of sound and film, published editions and broadcasts are also protected.
- 1.4. A copyright notice is to be applied to all College Materials are informed that copyright is claimed in the material and that permission may be required before they are allowed to reproduce or disclose it.
- 1.5. Where copyright in College Material is exclusive owned by the RACDS, copyright will be denoted with '© Royal Australasian College of Dental Surgeons (RACDS)' and the year of first publication, for example:  
  
© Royal Australasian College of Dental Surgeons (RACDS) 2020  
or, if the work is being regularly updated, all years from first publication to the present (i.e. 2015 – 2022).
- 1.6. Where College Material is jointly owned by the RACDS or the RACDS is the licensee, then an appropriate copyright notice denoting this should be used.
- 1.7. Where appropriate, the RACDS may limit how College Material is to be used by imposing certain conditions or restrictions. For example: 'This document is only intended for personal use by its intended recipient. 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 the Royal Australasian College of Dental Surgeons (RACDS).'

1.8. Notwithstanding the above notice requirement of the RACDS, it is not necessary to register a work for copyright protection nor compulsory to use the © symbol or copyright notices on materials in Australia to claim copyright. Legal protection exists from the moment the copyright material is created by or for RACDS.

## **2. MORAL RIGHTS**

2.1. Moral rights are personal rights that belong to the individual author of copyright material. Moral rights protect the reputation of creators and the integrity of their work, even if the creator no longer owns the work or the copyright in the work.

2.2. Moral rights are separate to copyright and cannot be transferred, assigned, or sold, although the person who has the moral rights can consent to certain uses of their material that may otherwise infringe their moral rights. Moral rights will not be infringed if the author consented to the work being used in a particular manner.

2.3. Moral rights comprise the following:

- a) Right of attribution - right of an author to be identified and named as the author of the work;
- b) Right against false attribution – right of an author to stop someone else being credited as the author of their work; and
- c) Right of integrity – right of an author to ensure that material is not treated in a derogatory way (i.e. significant distortion, mutilation or alteration of the work that could damage the author’s honour and reputation).

## **3. DETERMINING OWNERSHIP AND INTERESTS IN INTELLECTUAL PROPERTY**

### **3.1. Employees**

3.1.1. The RACDS has beneficial and legal ownership of all existing or future Intellectual Property created or developed by its employees in the course of employment, unless agreed otherwise.

3.1.2. All the RACDS’ employees are required to sign a standard Employment Agreement as part of their acceptance of employment. This Employment Agreement recognises that all Intellectual Property Rights in any secret or invention discovered, or any Material created by the employee, in the course of their employment vests in and is the property of the RACDS.

3.1.3. Ownership of existing or future Intellectual Property created outside the course of employment will remain entirely with the author unless otherwise agreed.

### **3.2. Members of the RACDS**

3.2.1. Generally, Intellectual Property in Materials created by Members of the RACDS vests in and is owned by the creating Member. Where Materials have been

developed jointly by two or more Members, then the Intellectual Property may be jointly owned by the developers, depending on the circumstances and any agreement between the Members.

3.2.2. Where Materials have been developed jointly by Members and employees of the RACDS, then the Intellectual Property may be jointly owned by the Members and the RACDS. Again, this depends on the circumstances and any agreement between the RACDS and the Members.

3.2.3. Materials developed by Members must not incorporate the existing Intellectual Property of the RACDS without the express written permission of the RACDS. Where Materials developed by Members do incorporate the existing Intellectual Property of the RACDS, the RACDS nevertheless retains all rights to its existing Intellectual Property, and Members may only use the material they have developed subject to the RACDS's consent and any restrictions that the RACDS might impose.

3.2.4. In circumstances where Material (i) has been jointly developed with the RACDS, or (ii) incorporates existing RACDS Intellectual Property, or (iii) Intellectual Property is to be owned by RACDS, then matters including the proportions of ownership, rights to use and license the Material and any other matters which may be relevant should be settled through a written agreement between all relevant parties.

3.2.5. In certain instances, the RACDS may require Members who participate in College activities to sign a document that:

- a) assigns all Intellectual Property in Materials they develop to the RACDS;  
or
- b) acknowledges that Intellectual Property in those Materials will vest in the RACDS; or
- c) grants the RACDS a broad licence to use and sublicense those Materials.

This may be necessary to meet Intellectual Property obligations imposed on the RACDS by external parties providing funding (e.g. government funding).

### 3.3. Boards of Studies, Committees and Working Parties

3.3.1. The RACDS Boards of Studies, Committees and Working Parties are part of the College legal entity and do not have independent legal status.

3.3.2. Any Materials developed by the Boards of Studies, Committees and Working Parties, are developed on behalf of and for the use of the RACDS and the RACDS either owns or has an implied licence to use all Intellectual Property in those Materials, on and from creation, as it sees fit. At the RACDS's request, all members of Boards of Studies, Committees and Working Parties are to execute any document necessary to assign any residual Intellectual Property rights to the RACDS.

3.3.3. It is recognised that the Boards of Studies, Committees and Working Parties may store some College Materials with other external organisations and allow those organisations to use College Materials. When using, communicating, or sharing College Materials with other external organisations, the relevant Boards of Studies, Committee or Working Party should ensure that:

- a) the requirements of this policy are met;
- b) all the RACDS copyright material is denoted with “© Royal Australasian College of Dental Surgeons” and the date of first or, if the work is being regularly updated, all years from first publication to the present (i.e. 2015 – 2022); and
- c) those external organisations using the College Materials do so under explicit written arrangements (e.g. licence, MOU, agreements).

### 3.4. Candidates and Trainees

3.4.1. The RACDS does not assert ownership of Intellectual Property in Materials developed by candidates and trainees as they acquire the appropriate information, knowledge and skills leading to the award of RACDS postnominals. Generally, candidates and trainees own the Intellectual Property they create through their studies, case reports and research papers whilst undertaking training programs and the membership pathway with the RACDS, unless otherwise agreed in writing. However, to the extent that materials developed by candidates and trainees incorporate any College Material, the RACDS retains all Intellectual Property rights in the College Material and candidates and trainees may only use the material they have developed for their own personal studies, unless they obtain prior written consent from the RACDS.

3.4.2. However, where the RACDS provides specific documentation and/or Materials to candidates/trainees, that documentation and/or Materials will be subject to copyright. Candidates/trainees must not use, copy, disseminate or publish such Materials except to the extent reasonably necessary for their own personal studies..

3.4.3. As part of candidates/trainees agreeing to participate in the various pathways and training programs of the RACDS, they also acknowledge that all Intellectual Property in documentation and/or Materials provided by the RACDS is owned by the RACDS and those Materials may only be used as directed by the RACDS.

### 3.5. Board of Directors

3.5.1. Members of the Board of Directors are required to protect the Intellectual Property of the RACDS and ensure that they comply with policies on the disclosure of information.

Materials created by employee directors in the course of their employment will vest automatically in the RACDS. Materials created by non-employee directors will usually be regarded as having been created by them on behalf of the

RACDS. Accordingly, the RACDS either owns or has an implied licence to use all Intellectual Property in those materials, on and from creation, as it sees fit. At the RACDS' request, all directors are to execute any document necessary to assign any residual Intellectual Property Rights to the RACDS.

### 3.6. Contractors

3.6.1. The RACDS must have formal agreements in place with contractors that clarify the position in relation to Intellectual Property and ensure that any Intellectual Property developed will be assigned to and become the property of the College, unless agreed otherwise.

3.6.2. The RACDS will request all contractors to:

- a) assign to it the Intellectual Property in Material created for the purposes of the contract;
- b) to the extent that any of the contractor's existing Intellectual Property is incorporated in the deliverables, grant an appropriate licence to the RACDS; and
- c) provide appropriate moral rights consents from all authors to ensure that the RACDS can use created works as envisaged under the contract.

3.6.3. Contractors should not be entitled to distribution of profits, royalties, license fees or any other ongoing payments in connection with Intellectual Property created by them for the RACDS.

## 4. PERMITTED DEALINGS WITH INTELLECTUAL PROPERTY

4.1. Generally employees, Members, candidates, and trainees of the RACDS are permitted to use, reproduce, amend and transmit College Materials for their own personal study purposes or as necessary to perform services required of them by the RACDS. This does not include any dealings of a commercial or financial nature, or the prohibited dealings set out in Item 6 below, without the College's prior written consent..

4.2. The RACDS' employees may communicate College Materials to co-employees, Members, candidates, or trainees of the College for the purposes of administration, research, review, training, or teaching.

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

4.4. In the event that the RACDS wishes to license College Materials to third parties and the RACDS is a joint owner or licensee of any Intellectual Property in those materials, it may consult with the owner / joint owner of the Intellectual Property and agree in writing as to the manner and extent of such licensing.

## **5. NOTIFICATION OF DEALINGS WITH INTELLECTUAL PROPERTY**

- 5.1. Should employees, Members, candidates/trainees, contractors and other third parties be required to engage in dealings, other than as permitted in this policy, or dealings of a commercial or financial nature, with College Materials, then they must obtain the prior written consent of the RACDS. This may include, but not limited to teaching materials and examination content.
- 5.2. Formal agreement or acknowledgement may be required. All materials provided will carry the notice '© Royal Australasian College of Dental Surgeons. All rights reserved.' along with the year of first publication or, if the work is being regularly updated, all years from first publication to the present (i.e. 2015 – 2022).
- 5.3. The RACDS must be notified prior to dealing with any College Materials. Written notification must provide a full and frank disclosure of the details of the proposed dealings.
- 5.4. Upon the RACDS 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 RACDS is not obliged to permit the intended dealings.

## **6. PROHIBITED DEALINGS WITH INTELLECTUAL PROPERTY**

- 6.1. Dealings with College Materials 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 College Materials may include, but are not limited to, the following, where they occur without the RACDS's prior written consent:
  - a) distributing, licensing, or communicating College Materials in any form to any third parties;
  - b) publishing College Materials in any form;
  - c) making copies or reproductions of College Materials in any form;
  - d) making adaptations of College Materials;
  - e) entering into commercial arrangements regarding College Materials; and
  - f) causing College Materials to be heard or seen in public other than for business-as-usual activities and processes of the RACDS.
- 6.2. If the RACDS is concerned that its Intellectual Property has been infringed by someone who has used College Materials without permission, its options to address the matter may include, but are not limited to, the following:
  - a) requiring the infringer to stop using the material;
  - b) requiring the infringer to acknowledge the source of the material by attributing the material to the RACDS;
  - c) requiring the infringer to pay the RACDS a fee equivalent to a licence fee it would have charged if it had authorised the use of the material by the infringer; and/or

- d) taking legal action, including seeking remedies such as damages to compensate for loss or damage resulting from the infringement of the RACDS' Intellectual Property.

6.3. In a similar light, when using and sharing materials of another party, the concerned RACDS party must ensure that it has the right to do so and that it complies with the conditions attached to the rights granted to avoid infringement of another person's or organisation's Intellectual Property.

## 7. TRADE MARKS

7.1. A trade mark is a mark or sign which is used to distinguish goods or services of one person or organisation from those of another. A trade mark may be a word, phrase, logo, sound, smell, shape, picture, or any combination of these.

7.2. Registration of a trade mark affords the strongest form of protection as this provides the owner with the exclusive rights to use the trade mark for particular goods or services.

7.3. The Board of Directors shall make a determination if trade mark registration with IP Australia is to be undertaken to secure exclusive rights and prevent others from using the same or a similar trade mark in respect of particular goods or services.

7.4. The following RACDS trade marks are currently registered with IP Australia, in Classes 9, 16, 35, 41, 42 and 44:

7.4.1. Word: 'Royal Australasian College of Dental Surgeons' (Number 2117923)

7.4.2. Word: 'RACDS' (Number 2117924)

7.4.3. Figurative: coat of arms with the words 'Vincat Scientia Morbos' (translated as Let Knowledge Conquer Disease) (Number 2117922)



7.4.4. Figurative: combined coat of arms with the words Royal Australasian College of Dental Surgeons (Number 2117922)



7.5. In general terms, the RACDS' trade marks are infringed if a substantially identical or deceptively similar mark is used without its permission in relation to the same or similar goods or services for which the mark is registered. Action can be taken by the RACDS under the Trade Marks Act 1995 (Cth), under common law (for 'passing off') or under the Australian Consumer Law (which is set out in the Competition and Consumer Act 2010 (Cth)) for deceptive and misleading conduct or false and misleading representations.

## 8. CONFIDENTIAL INFORMATION

8.1. Confidential information is information that is confidential or secret to an organisation or person. To be considered confidential, the information must not be available in the public domain. Examples of confidential information may include, but are not limited to:

- a) An organisation's contact and client list;
- b) Internal pricing and funding information;
- c) Internal business processes;
- d) Recipes, trade secrets, inventions;
- e) Marketing or business strategies; and
- f) Other processes or strategies.

8.2. Protection of confidential information lasts as long as such information stays confidential. However, once confidential information has been disclosed (e.g. made public), it will no longer be confidential and cannot be confidential again.

8.3. The RACDS is committed in ensuring it has strict guidelines in place to maintain the confidentiality of information. Where appropriate, a note (e.g. 'strictly confidential', 'commercial-in-confidence') may be placed on a particularly sensitive material to demonstrate there is no intention to disclose the material publicly and to remind recipients of the information's confidential nature. Alternatively, a notice may be included on the material, as follows:

**Important Notice:** The information contained in this document is confidential information of the Royal Australasian College of Dental Surgeons (RACDS) and all copyright subsisting in this document is owned by RACDS. The information in this document is provided only for the purposes of [insert authorised purposes] and must not be disclosed, reproduced, published, performed, communicated to the public or adopted by any person for any other purpose, except with the prior written consent of the RACDS. This

notice must be retained on any copies or adaptations of all or any part of this document.

8.4. Where applicable, other intended recipients of confidential information (e.g. volunteers, contractors) may be asked to sign Confidentiality/ Non-Disclosure Agreements before they start working. This Confidentiality/Non-Disclosure Agreement may be a separate agreement or a set of clauses in a larger agreement.

## **Resources**

IP Australia <https://www.ipaustralia.gov.au/>

Justice Connect (Guide to Intellectual Property Law – A guide for community organisations in Australia on creating and protecting intellectual property May 2020)

## **Legislation**

Copyright Act 1968 (Cth)

Trade Marks Act 1995 (Cth)

Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth))