

1.0 POLICY

The purpose of this rule is to set out Holmesglen's policy in relation to Intellectual Property. It provides guidance to Holmesglen's staff members and students about the framework for dealing with intellectual property generated at Holmesglen.

Holmesglen is committed to providing an environment where innovation in teaching practice and resource development can flourish. Part of that commitment is the formulation of this rule. It provides the framework to ensure that the treatment of Intellectual Property ownership promotes:

- scholastic excellence and freedom, for both staff members and students
- reward for inventiveness and innovation, for both staff members and students.

Holmesglen is also committed to administering this rule and to protect, manage and to commercialise Intellectual Property consistent with the recognition that its primary functions are teaching, resource development, and community service.

2.0 DEFINITIONS

Intellectual Property

Intellectual Property refers to creations of the mind: inventions, literary and artistic works, symbols, names, images, and designs used in commerce.

Intellectual Property can be divided into two categories:

- *Industrial property*, which includes inventions (patents), trademarks, industrial designs, and geographical indications of source; and
- *Copyright*, which includes literary and artistic works such as novels, poems, plays and films; musical works; artistic works such as drawings, paintings, photographs and sculptures; and architectural designs.

Rights related to Copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs. Refer to the [Rule for Copyright](#).

Copyright

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

Creator

Creator means the staff members or students responsible for creating Intellectual Property.

Attribution

Attribution in copyright law is the requirement to acknowledge or credit the creator of a work which is used or appears in another work.

Staff Member

Staff Member means an employee of Holmesglen.

Student

Student means a person enrolled in any award, course, subject/unit/module offered by the Institute, whether on a full-time or part-time basis.

Holmesglen

Holmesglen means Holmesglen Institute.

3.0 RESPONSIBILITIES**3.1 Executive Director Educational Development and Design**

The Executive Director Educational Development and Design shall administer and periodically review this rule.

3.2 Chief Financial Officer

The Chief Financial Officer is responsible for determining ownership of Intellectual Property. The Chief Financial Officer will maintain a register of all Intellectual Property as notified.

3.3 Chief Executive

The Chief Executive shall hear appeals against decisions relating to ownership of Intellectual Property.

4.0 OWNERSHIP OF INTELLECTUAL PROPERTY**4.1 Statutory Intellectual Property**

Some types of Intellectual Property are protected by specific Commonwealth statutes. These are:

- Patents Act, 1990, deals with patents granted over inventions, discoveries, and new products and processes
- Copyright Act, 1968, deals with works in which Copyright subsists, including literary works (including computer programs), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances
- Plant Breeders' Rights Act, 1994, for new plant varieties
- Designs Act, 2003, for industrial and product designs
- Trade Marks Act, 1995, for trade marks
- Circuit Layouts Act, 1989, for circuit layouts.

4.2 Holmesglen's Intellectual Property

Holmesglen's Intellectual Property falls mainly within the Copyright category.

The main involvement of Holmesglen staff members with Intellectual Property is in the creation and use of course materials. These are materials which are used in a course for the provision of teaching activities conducted by Holmesglen and includes but is not limited to:

- overhead transparencies
- slides
- photographs
- maps
- diagrams
- handbooks
- manuals
- course outlines
- exercises
- computer programs
- multimedia works that serve a teaching function.

4.3 Intellectual Property created by staff members

In accordance with general law principles, Holmesglen as an employer is the owner of Intellectual Property created by staff members in the course of their employment by Holmesglen.

If staff members use Holmesglen resources and facilities to create Intellectual Property, it is generally considered that this Intellectual Property has been created in the course of employment and that Holmesglen owns the Intellectual Property.

However, given Holmesglen's aim of promoting staff inventiveness and innovation, Holmesglen will in certain circumstances waive its claim to ownership.

4.3.1 Course Materials created by staff members

Holmesglen claims ownership of course materials created by Staff Members. Staff members are permitted to use the course materials for publication in a book and for their teaching purposes, provided the course materials are sufficiently attributed. Staff members are not permitted to use the course materials for any other purpose without the permission of Holmesglen. Refer to the [Rule for Copyright](#) for attribution requirements.

Attribution includes but is not limited to:

- acknowledgement of contribution by personnel for use of Holmesglen materials
- acknowledgement of Third Party Materials (copyright materials) sought and used with permission of the copyright owner
- use of the Electronic Use Notice that is attached to all electronically transmitted materials
- use of appropriate markings when preparing master copies for the purposes of print/intellectual disability
- use of Statement for Linked Pages when accessing resources from external websites.

4.3.2 Commissioned Works

A commissioned work is a specific work which Holmesglen has directed, requested or funded a staff member (or contractor) to create.

Copyright in commissioned works is owned by Holmesglen (unless the terms of a specific contract dictate otherwise). For example, Holmesglen has copyright over ordered building plans and specifications once purchased.

A commission using a Commonwealth grant usually means that the copyright rests with the Crown.

4.3.3 Other

All other Intellectual Property created by staff members, in the course of their employment by Holmesglen, remains the property of Holmesglen.

4.4 Intellectual Property created by students

Students, not being employees of Holmesglen, will own the Intellectual Property that they generate.

4.5 Commercialisation of Intellectual Property

4.5.1 Identification of Intellectual Property

Staff members shall identify commercialisable Intellectual Property (ie, that which is able to generate an external profit) and communicate to Holmesglen all relevant details of that Intellectual Property.

It is not necessary to notify Holmesglen of Intellectual Property that is fairly assessed as not being commercialisable.

Notification shall be to the Chief Financial Officer who will maintain a register of all Intellectual Property that is notified.

4.5.2 Commercialisation by Holmesglen

Holmesglen will use its reasonable endeavours to commercialise Intellectual Property. The process of commercialisation will be undertaken in collaboration with the creators.

4.5.3 Commercialisation by creators

Where Holmesglen decides not to commercialise any particular Intellectual Property, Holmesglen will negotiate with the creators:

- for the assignment of the Intellectual Property by Holmesglen to the creators
- from any commercialisation revenues received by the creator, the payment to Holmesglen of a share of those revenues, to compensate Holmesglen for the use of its facilities and resources.

4.5.4 Distribution of Commercialisation Revenues

Where Holmesglen commercialises any Intellectual Property, Holmesglen may distribute some of the commercialisation revenues to creators.

4.6 Moral Rights and Appeals

4.6.1 Moral Rights

Holmesglen recognises the moral rights of authors and creators. These include:

- the right of fair attribution of authorship or invention
- the need to protect work from any alteration or use which may harm the reputation of the creator, and
- an opportunity for the creator to be consulted in determining the final outcome of the creator's labours.

4.6.2 Appeals Mechanism

Appeals against any decisions of the Chief Financial Officer in regard to the ownership of Intellectual Property may be made to the Chief Executive, who will take such action as he sees fit.

4.7 Review

This rule will periodically be reviewed and, when necessary, amended to be responsive to the changing environment. Reviews will be undertaken by the Executive Director Educational Development and Design.

5. DOCUMENTS

In developing this rule, Holmesglen has been guided by Intellectual Property policies of the Northern Territory University, other Australian universities, and two key publications of the Australian Vice-Chancellors' Committee:

'Ownership of Intellectual Property in Universities' Policy & Good Practice Guide (AVCC, 2002)

'University Research - Some Issues' (AVCC, 1996).

[Rule for Copyright](#)

[GOV114 Permissions/Licences Register.](#)

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