

**Gold Sponsors:**  
**UniQuest**



Australian Government

Department of Innovation  
Industry, Science and Research

**Bronze Sponsors:**



DAVIES COLLISON CAVE  
PATENT AND TRADE MARK ATTORNEYS

SouthernCross VENTURE PARTNERS

Starfish Ventures



**& Supporters:**



Queensland  
Government



**Media Partner:**  
australian  
**anthill**

To submit your news, give your feedback, or place advertising in this newsletter please contact the editor at:  
editor@aaai.net.au

## AAAI Education for Angels

In the week following the AAAI National Angels Conference in Brisbane, three Australian Angel leaders joined peers in New Zealand for a week of train-the-trainer certification.

- John Mactaggart  
AAAI Chair, Brisbane Angels Founder/Chair
- Jordan Green  
AAAI Deputy Chair, Melbourne Angels Founder/Chair
- Andrew Loch  
Gold Coast Angels Founder/Chair

The AAAI is committed to delivering a comprehensive range of educational offerings to assist our members improve the efficiency and effectiveness of their angel investment activities.

In the last four years the AAAI Board have been actively building relationships with our peers overseas and studying the more developed angel communities. A key lesson learned is that the fundamentals of angel investing are the same all over the world.

With that in mind the AAAI has opted to avoid re-inventing the wheel and selected the [Power of Angel Investing](#) (PAI) curriculum developed by the [Ewing Marion Kauffman Foundation](#) for the [Angel Capital Association](#) in the USA. Now managed by the [Angel Capital Education Foundation](#), this series of full day and half day workshops addresses the range and scope of the angel investment life cycle.

John May, who was a featured panellist at the Conference in Brisbane, is a director of the ACEF and a lead instructor for the PAI. John ran the certification program in NZ. There were two presentations of the full day introductory course, *Angel Investing - An Overview*. The second presentation was made by the "students" as the final step in the certification program.

The first presentation was in Auckland and the second in Wellington. In between the AANZ & NZVIF provided facilities in Auckland for the training of the instructors. Our thanks and appreciation to our Kiwi cousins. This close cooperation of the AAAI with the AANZ will continue as we build the angel investor communities in Australasia.

Sincere thanks and appreciation to John May and to all our friends at the ACA/ACEF who have consistently offered their support and encouragement to the AAAI and AANZ.

The AAAI will run PAI workshops, both full day and half day, throughout the rest of 2009 in capital and regional cities around Australia.

Leading Australian Angels will be involved in localising the reference data and case studies. Mostly, Australian data will be included alongside the USA data because, as said before, the trends, metrics and conclusions are largely universal.

The workshops available in the PAI curriculum include:

- Angel Investing - An Overview (Full Day)
- Starting An Angel Organisation (Full Day)
- Doing the Deal: Term Sheet (Half Day)
- Due Diligence (Half Day)
- Valuation and Portfolio Strategies (Half Day)
- The Post Investment Relationship: Entrepreneurs and Angels (Half Day)

The AAAI is developing its own workshops, such as the half day Introduction to Angel Investing presented at the Conference in Brisbane. AAAI workshops will complement the PAI curriculum and focus in more detail on the Australian context.

While the AAAI is not offering education for entrepreneurs, AAAI officers and leading Angels will participate in entrepreneur focused events to introduce entrepreneurs to the Angel ecosystem.

Angels will run information sessions for entrepreneurs in the Finance & Treasury Association May Money Expo in Sydney (Hamish Hawthorn) and Melbourne (Jordan Green).

### In this Issue:

AAAI Education for Angels	Page 1
Top 10 Intellectual Property Mistakes, Part 2	Page 2
Events	Page 3
AAAI Research	Page 3
Angel Group Directory	Page 3

# Australian Association of Angel Investors Limited

30 Beeston Street, Newstead, Queensland 4006

Web: [www.aaai.net.au](http://www.aaai.net.au)

Email: [info@aaai.net.au](mailto:info@aaai.net.au)

ACN 127 412 515

Phone: +61.7.3358-3627

## Top 10 Intellectual Property Mistakes

## Part 2

by Malcolm McBratney, Partner, McCullough Robertson

Continuing from last issue when Malcolm started out introducing Intellectual property as an extremely valuable asset. However, its importance in commercial dealings and transactions does not always get the legal attention it deserves. Often mergers and acquisitions, capital raising and day to day commercial dealings occur without a proper consideration of intellectual property issues. These simple oversights can result in costly legal problems when things go wrong. Continued here are the top ten intellectual property mistakes that we see businesses make far too regularly.

### 5. Joint ownership of intellectual property

When collaborating, for example on a research project, it is often difficult to know what will result. Many businesses fail to properly deal with ownership of resulting intellectual property or simply agree to joint ownership. While at first glance co-ownership may appear to be a convenient solution it can be rife with problems. Co-ownership gives co-owners different rights in different countries. In Australia co-ownership can limit a party's ability to commercialise the intellectual property without the permission of the other co-owners. If commercialisation is something that you are contemplating, it is important to agree to these rights upfront. To prevent any uncertainty your agreement should expressly provide for who owns the resulting intellectual property and who has the right to commercialise and enforce the intellectual property.

### 6. Not registering a trade mark

A common misconception is that the registration of a business, company or domain name confers exclusive rights in that name. However, business and company names are no more than statutory requirements and registration does not give the owner any proprietary right as such to use the name. Similarly the registration of a domain name does not confer exclusive rights. To have a proprietary form of intellectual property you must have a registered trade mark. In Australia registration grants an owner the exclusive right to use or authorise the use of the trade mark for renewable periods of ten years as well as bring an action for infringement. Trade marks are country by country so businesses should register trade marks for their important names, brands and logos in each country they operate in or intend to operate in within the next 3-5 years.

### 7. Not obtaining appropriate warranties and indemnities in relation to licensed intellectual property

Obtaining goods or services or intellectual property from a supplier will not necessarily protect you if a third party sues you for breaching their intellectual property rights. Ideally, as a customer, you should obtain a warranty from the supplier that they have the authority to grant the licence and that the exercise of the licence rights will not infringe any third party's intellectual property rights. It is also prudent to obtain an indemnity from the licensor against third party claims. You should also confirm that the supplier has insurance or is of sufficient substance to defend a claim.

### 8. Not documenting intra-group licences

Licences granted between entities in the same group may seem harmless; however, if not documented correctly, problems can arise. If a licence is not documented and the terms of the licence not carefully drafted, various issues may surface in situations such as a re-structuring of the corporate group or a change of control. In bringing an action for infringement it is essential that the entity that has the right to sue and recover damages is named as the proper plaintiff. In the case of third party claims it is important to ensure that the right group is defending the action and appropriate warranties and indemnities are in place. Documenting intra-group licences is also an important issue in relation to trade marks. For a trade mark to be registered it must be used or intended to be used by the applicant or someone authorised by the applicant. While an authorised user can extend to a large number of subsidiaries, owners must exercise some degree of control over what is done with the mark. For this reason it is important that licences are documented correctly so that the proprietary owner and the 'authorised user' are known and appropriate arrangements are in place.

### 9. Compliance with the Franchising Code of Conduct

Often businesses enter into supply, distribution or other commercial agreements, without realising that the agreement may in fact at law be a franchise agreement. Very simply speaking a franchise agreement consists of an agreement that grants a right to carry on a business under a system or marketing plan substantially controlled or determined by the franchisor, that is associated with a name or trade mark and payment is made to the franchisor. If the agreement is a franchise, the franchisor is subject to numerous obligations under the Franchising Code of Conduct which includes amongst other things the requirement to create a disclosure document before entering into the agreement and to include certain terms in the agreement itself. A breach of the Franchising Code of Conduct is a breach of the Trade Practices Act 1974 (Cth), with severe consequences.



"I lost some intellectual property here last night. Anybody remember what the hell I was talking about?"

### 10. Privacy Act 1988 (Cth) compliance

Private sector organisations that turn over more than \$3m per annum are required to comply with the Privacy Act 1988 (Cth). Many businesses remain non-compliant with the Privacy Act notwithstanding its application to the private sector since 2001. Further, organisations should also be aware of the Spam Act 2003 (Cth) which regulates the sending of unsolicited commercial electronic messages by all organisations, even those with a turnover of under \$3m.

### Conclusion

Of course, not all of our clients make these mistakes and many do seek advice before entering into agreements or major transactions. Many seek assistance in either drafting their own agreements, or in negotiating the other party's agreement. More often than not, these clients end up with agreements that maximise the value of their intellectual property and better manage the risks.

## ANGEL GROUP DIRECTORY

**BIOANGELS**

Contact: Corinna Steeb  
 Web: [www.bioangels.org](http://www.bioangels.org)  
 Email: [csteeb@bioangels.org](mailto:csteeb@bioangels.org)  
 Phone: +61.439.889-513

**BRISBANE ANGELS**

Contact: John Mactaggart  
 Web: [www.brisbaneangels.com.au](http://www.brisbaneangels.com.au)  
 Email: [admin@brisbaneangels.com.au](mailto:admin@brisbaneangels.com.au)  
 Phone: +61.7.3358-3627

**CAPITAL ANGELS**

Contact: David Malloch  
 Web: [www.capitalangels.com.au](http://www.capitalangels.com.au)  
 Email: [david@capitalangels.com.au](mailto:david@capitalangels.com.au)  
 Phone: +61.418.620-613

**DARLING DOWNS ANGELS**

Contact: Darryl Redding  
 Email: [darryl.redding@dtmdi.qld.gov.au](mailto:darryl.redding@dtmdi.qld.gov.au)  
 Phone: +61.7.4698-9800

**FOUNDERS FORUM**

Contact: Rick McElhinney  
 Web: [www.foundersforum.com.au](http://www.foundersforum.com.au)  
 Email: [info@foundersforum.com](mailto:info@foundersforum.com)

**GOLD COAST ANGELS**

Contact: Andrew Loch  
 Web: [apollo13.angelgroups.net](http://apollo13.angelgroups.net)  
 Email: [aloch.mail@gmail.com](mailto:aloch.mail@gmail.com)  
 Phone: +61.407.960-004

**HUNTER FOUNDERS FORUM**

Contact: Kerry Simpson  
 Web: [www.hunterfoundersforum.com.au](http://www.hunterfoundersforum.com.au)  
 Email: [hunterfoundersforum@hacc.org.au](mailto:hunterfoundersforum@hacc.org.au)  
 Phone: +61.404.688-490

**MELBOURNE ANGELS**

Contact: Jordan Green  
 Web: [melbourneangels.angelgroups.net](http://melbourneangels.angelgroups.net)  
 Email: [jordan@ieee.org](mailto:jordan@ieee.org)  
 Phone: +61.425.730-799

**SA ANGELS**

Contact: Mike Richards  
 Email: [mike.richards@state.sa.gov.au](mailto:mike.richards@state.sa.gov.au)  
 Phone: +61.8.8303-2348

**SYDNEY ANGELS**

Contact: Vivian Stewart  
 Email: [vivian@hallcapital.com.au](mailto:vivian@hallcapital.com.au)  
 Phone: +61.411.699-949

**WA ANGELS**

In development, contact the editor to be referred to the founders.

[All emails and web sites clickable]

**Events****AUSTRALIA**

Brisbane Angels Breakfast  
 May 5<sup>th</sup> & May 28<sup>th</sup>, Brisbane

BioAngels Meeting  
 April 8<sup>th</sup>, Adelaide

Darling Downs Angels Meeting  
 May 8<sup>th</sup> 12-2pm, Platinum International Hotel, Toowoomba

Gold Coast Angels Meeting  
 April 22<sup>nd</sup>

Hunter Founders Forum Pitch Breakfast  
 Speaker: Defence Min, Joel Fitzgibbon  
 May 22<sup>nd</sup> 7-9AM Crowne Plaza Hotel, Newcastle

Melbourne Angels Deal Meeting  
 April 8<sup>th</sup> 4:15-6:15pm, ICN (Victoria), Melbourne

AAAI Summit – May 12-14 Adelaide  
 PAI Master Class (see page 1) – book early  
 National Group Leaders Forum

AAAI National Angel Conference  
 February 2010 Adelaide

**INTERNATIONAL****ACA National Summit**

15-17 April 2009 Atlanta, Georgia, USA

WBAA Council Meeting  
 20 April 2009, Dubai

**EBAN 9th Annual Congress**

27-28 April 2009 Madrid, Spain

**NACO National Angel Summit**

October 2009 Halifax, Nova Scotia, Canada

**WBAA Inaugural Conference**

November 2009

***Introduction to Angel Investing in NSW:*** AAAI and NSW Department of State and Regional Development present a free seminar for those interested in becoming angel investors, not for entrepreneurs or professional services providers.

Michael Harrington, DSRD business development manager, will outline early stage investment opportunities in NSW and explain how DSRD supports angel investing by supporting the companies in which angels invest.

Angel groups offer investors benefits in pooling of skills and information, sharing and exchanging specialist expertise and the opportunity to syndicate investments.

April 2<sup>nd</sup> 4-6pm at DSRD Sydney office. To register email: [contact@sydneyangels.net.au](mailto:contact@sydneyangels.net.au)

***Angel Research – Angel Groups***

The AAAI 2008 National Angel Survey was the first of an ongoing series of annual surveys being undertaken by the Australian Association of Angel Investors to develop a better understanding of angel investing activity in Australia. The survey combines overall angel investment activity and drills down on angel group activity.

In the last three years ***angel groups invested \$3,927,522 in 18 deals***. Into those deals ***angel groups leveraged co-investment in excess of \$6,469,478***. The ***collective valuation of \$63,370,060*** for those investments is after accounting for three exits; two companies wound-up and one sold through ***trade sale for a 25x ROI***.

The survey indicates that ***over 3,000 jobs each year are supported by angel group investments***.

88% of angel group investments were in seed and start-up companies. The most popular sectors for those investments were ICT and Biotechnology. Looking ahead ICT remains top preference while Biotechnology drops to sixth place and Clean Technology jumps to a strong second.

Consistent with the small market environment in which they operate, every angel group is willing to invest in Australian opportunities outside their home city. Despite the geographic challenge ***angel groups typically complete a deal in only 3 months***.

***Angel group investors prefer Ordinary shares***, shy away from convertible debt and make prudent use of convertible preference shares and other securities as appropriate.

Angel groups seek formal roles for a member to represent the group's interest and as a channel for the contribution from all angel group investors. Such formal appointments occur in approximately 60% of investments and are evenly split between executive and non-executive roles.

The number of angel groups is increasing, having grown from 3 in 2006 to 10 by the end of 2008. The AAAI is committed to continuing to foster the growth of existing angel groups and the formation of new groups to grow a sustainable angel investor community.

Contact the editor for a copy of the Survey Report.

The opinions expressed herein do not necessarily represent the views of the AAAI or the publisher. While every effort has been made to ensure accuracy of the information contained therein, no responsibility can be accepted for errors and none of the AAAI, the publisher and their respective employees shall be liable on any grounds whatsoever in respect of decisions or actions taken as a result of using this publication. The information provided is a general guide only and should not be used, relied on, or treated as a substitute for specific professional advice.

© 2009 Australian Association of Angel Investors (AAAI). All rights reserved. Australian Association of Angel Investors is Australia's membership association for Angel Investors. It is dedicated to making a positive impact on the economy and society by promoting professional and ethical investment and is the provider of the Angel Investor Education series of courses.