

Confidentiality and Intellectual Property

Guide

If your volunteers are privy to confidential information about your organisation, staff or clients, you need a clear policy on how they should maintain the confidentiality of that information. Intellectual property is another complex issue in the management of information and it is important you know how to administer this process within your organisation.

Policy and procedures

A policy on confidentiality of information can be adapted to the specific needs of your organisation, examples of information to be included in your policy may include:

- Volunteers are required to maintain confidentiality regarding information involving the organisation, the volunteer program, paid staff, other volunteers and clients.
- Information must not be disclosed to anyone outside the organisation or to others within the organisation, unless express permission is given to do so by an appropriate authority.
- Breaches of confidentiality will result in disciplinary action or termination of the volunteer's engagement with the organisation, other than where the volunteer can show specific circumstances that justify the breach.

Your policy will need to be supplemented by a set of procedures that spell out the 'specific circumstances' that might justify a breach of confidentiality, such as:

- disclosure as part of legal proceedings
- where written permission to disclose was obtained from the client in question
- where failure to disclose the information could have led to injury or death.

And of course, you should make sure you include this policy in induction/training programs and ask volunteers to sign a confidentiality agreement to ensure they are aware of their responsibilities.

Unincorporated Organisations

Unincorporated organisations cannot legally own Intellectual Property. This is simply because an unincorporated association has no separate legal identity under the law –legally, the organisation does not exist as a 'person'. In this case, intellectual property must be held by an individual, on trust for the organisation and licensed to other members of the organisation to use.

Confidentiality

Volunteers in your organisation may have access to privileged or confidential information regarding the organisation or its clients, its staff or other volunteers. Your volunteers must understand the limitations on the scope and nature of the information they can divulge to others, both within and outside the organisation.

Examples of confidential information may include:

- an organisation's client and contact lists
- internal pricing and funding information
- internal business processes
- marketing or business strategies other processes or strategies such as special maintenance or advertising processes.

Private and confidential

Confidentiality is very much linked to privacy, it is best practice to assume that all privacy laws apply to your organisation. It is also important to note that there are both State and Federal laws when it comes to privacy. For more on your organisation's responsibilities in relation to information you hold regarding your volunteers (and others), see Fast Facts – Protecting the Privacy of Volunteers.

Intellectual Property

Intellectual Property (IP) is a broad term encompassing copyright (such as written, graphic and audio-visual material), trade marks (such as names and logos), patents and designs. Ownership of IP can be complex and especially so in volunteering relationships.

Under Australian copyright law, the owner of original copyright works has the exclusive right to use and copy those works and license others to do so. Copyright does not need to be registered. Copyright in original works, such as written text, photographs, drawings and videos, is automatically granted upon its creation. It is not necessary to use the © symbol to prove copyright ownership, although use of the symbol is generally recommended to indicate that copyright is claimed over the relevant material.

Ownership of copyright in original works belongs to the author of the work in the first instance. If the creator is a paid employee in the course of his or her employment, copyright is generally owned by their employer. However the same does not apply to volunteers.

If a volunteer creates copyright works in the course of their volunteering activities, the organisation will generally have an implied license to use those materials. However, the implied license will only extend to the purpose for which those materials were created, so problems can arise where, for example, the volunteer organisation wants to repurpose or adapt the materials for other projects. It is therefore important to clarify, in writing, how the parties can use material created in the course of volunteer work.

Trade marks are signs used to differentiate an organisation's goods and services from those of other traders. A trade mark can consist of words (such as an organisation's name), logo, slogan or any other form of branding. A trade mark can be registered or unregistered, although a registered trade mark provides greater rights and more effectively prevents other traders from adopting confusingly similar marks. Registration of a business name, for example, does not offer any form of IP protection.

A registered trade mark also grants the owner the right to use the ® symbol to indicate registration. It is an offence to falsely represent that a trade mark is registered and so this symbol should only ever be used by registered trade mark owners.

A Guide to Intellectual Property Law: A Guide for community organisations in Australia on creating and protecting intellectual property from <http://www.nfplaw.org.au/ip> states:

‘When undertaking these activities, IP issues should always be considered – both to ensure your organisation’s IP is properly protected, and to make sure that your organisation does not infringe another group or person’s IP rights. It is always best to consider IP at the very beginning of a project so that you do not mistakenly infringe existing IP (which may mean you will have to change names or logos later on), and so that you will be best placed to be able to stop other parties from taking advantage of the goodwill and value that you may generate in your own IP.

Volunteering Victoria recommends that all organisations include an IP clause in volunteer agreements and policies. Organisations that engage volunteers to produce significant materials or resources – their annual report, research or graphics for example – should take particular care to clarify ownership of intellectual property and how it may be used by the parties. You should also ensure you protect your IP by applying for registration of trade marks where applicable.

More information

For more information on Privacy go to <http://www.nfplaw.org.au/privacy>

For more information on Intellectual Property go to <http://www.nfplaw.org.au/ip>