

Confidentiality and Intellectual Property

Guide

If your volunteers are likely to be 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.

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, or other processes or strategies such as special maintenance or advertising processes
- passwords etc. to access business email addresses and IT systems

Policy and procedures

A confidentiality policy should be established, maintained and updated periodically in order to protect the confidentiality of confidential information.

The policy should be adapted to the specific needs of your organisation, but generally it should specify:

- the types of information that are confidential for the purposes of the policy (such as the examples provided above)
- the obligations that are imposed on volunteers with respect to that information (namely, volunteers are

required to maintain confidence by not disclosing confidential information to anyone outside the organisation or to others within the organisation, unless express permission is given to do so by an appropriate authority and/or the disclosure is exempt from confidentiality obligations)

- the consequences that flow from a breach of confidence, including disciplinary action or termination of the volunteer's engagement with the organisation.

Your policy should be supported by a set of procedures that spell out the specific circumstances in which a disclosure is exempted from confidentiality obligations, such as:

- where the disclosure is required by law or court orders
- where written permission to disclose was obtained from the entity to whom obligations of confidence are owed

Training

Of course, you should make sure you include this policy in induction/training programs and require volunteers to sign a document which acknowledges that they have read, understood and agree to comply with their obligations of confidence.

Confidential information and privacy obligations

Confidential information might include information that attracts privacy obligations. Accordingly, 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.

More information

For more information on Privacy go to:

Our Guide – 'Protecting the Privacy of Volunteers'

<http://www.nfplaw.org.au/privacy>

[Privacy Guide \(nfplaw.org.au\)](http://www.nfplaw.org.au)

It is important that you know how to protect your organisation's Intellectual Property (IP) rights and how to protect your organisation against infringement claims by third parties.

Intellectual Property

IP is a broad term encompassing matters such as:

- copyright (such as written, graphic and audio-visual material);
- trade marks (such as brand names and logos);
- patents (which relate to inventions); and
- designs (which relate to the appearance of a product).

Ownership of IP can be complex and especially so in volunteering relationships.

Unincorporated Organisations

Unincorporated organisations (such as unincorporated associations, partnerships and trusts) cannot legally own IP in their own name. This is simply because an unincorporated organisation has no separate legal identity under the law –legally, the organisation does not exist as a ‘person’. In this case, IP is generally held by an individual on trust for the organisation and licensed to other members of the organisation to use.

Copyright and related rights

Australian copyright law gives exclusive rights to do, and license others to do, specified acts in relation to works (such as literary works and photographs) as well as other subject-matter (such as sound records and films) for the duration of copyright, including for example the right to copy those works/subject matters. Copyright automatically subsists upon the creation of the underlying work/subject matter.

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.

Generally, ownership of copyright in original works belongs to the creator of the work in the first instance (there are exceptions for photographs taken for private or domestic purposes, portraits, engravings, sound recordings and films). That creator is known as the 'author' of the work. However, if the author is a paid employee who authors the work in the course of his or her employment, copyright is generally owned by their employer unless there is an agreement to the contrary. However the same does not apply to volunteers.

their volunteering activities, the organisation will generally have an implied license to use those materials. However, generally 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 the volunteer work.

Additionally, moral rights must be considered whenever copyright interests are being addressed. Australian law recognises an author's moral rights – including, for example, the author's right to be attributed to the work. While an author cannot assign their moral rights, an author can provide consents in relation to their authored work.

Trade marks

Trade marks are signs used to differentiate an organisation's goods and services in the course of trade from those of other traders. A trade mark can consist of words (such as an organisation's name), logo, slogan or most other forms 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 substantially identical or deceptively similar marks.

Registration of a trade mark is different to registration of a business name, although an organisation might hold registrations for both. Registration of a business name does not offer any form of IP protection; rather it is a legal requirement when conducting a business in Australia under the relevant name.

A registered trade mark also grants the owner the right to use the ® symbol to indicate its 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.

Policy and procedures

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 IP 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 IP go to <http://www.nfplaw.org.au/ip>