

Intellectual Property and Knowledge Policy

April 2009



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This policy document has been prepared by the Research Advisory Group (RAG) of UnitingCare NSW.ACT. The contribution of all RAG members is acknowledged and appreciated.

In preparing the Intellectual Property and Knowledge Policy for UnitingCare NSW.ACT and its constituent agencies (UnitingCare Ageing; UnitingCare Burnside; UnitingCare Children's Services; UnitingCare Disability; UnitingCare Unifam; and the Harris Community Centre) we have taken account of laws and/or public policy which impact on intellectual property, copyright and moral rights issues and the relationship of intellectual property and knowledge policy to growing areas such as internet and website content and training materials.

The document draws on the Intellectual Property and Knowledge Policy developed by UnitingCare Burnside in 2002 and we acknowledge the input of the foundation members of the UnitingCare Burnside Research Advisory Group and former consultants and staff - Ms Jenny Doyle, Mr Robert Urquhart and Ms Naifee Young - whose work was pivotal to its design and development.

None of these people have contributed to any errors of fact or interpretation. Responsibility for this rests entirely with UnitingCare NSW.ACT.

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1. Rationale

UnitingCare NSW.ACT and its constituent service groups and agencies strongly support independent research being conducted on its programs. However, we also recognise that the needs of researchers must be balanced against the rights of our clients (who may also be described as 'service users' or 'residents'), staff and volunteers.

UnitingCare NSW.ACT believes that the knowledge and skills of its employees and clients are an important resource within the organisation. The Intellectual Property and Knowledge Policy provides a means of formally recognising and protecting this 'hidden' resource. It also encourages the generation of new ideas and facilitates the free flow of information both within UnitingCare NSW.ACT and in the broader community.

2. Guiding Principles

Intellectual Property (IP) is generally regarded as representing "...the property of your mind or intellect" (IP Australia, 2008) and there are a number of methods (including patents, trade marks and design registrations) which can be used to protect and exploit IP. The method which is most directly relevant to the work of UnitingCare NSW.ACT pertains to copyright provisions for original material in research, literary, artistic, dramatic or musical works, and in other works that include films, broadcasts, multimedia and computer programs (IP Australia, 2008).

This booklet is designed to help researchers and others protect the IP rights of the many people associated with UnitingCare NSW.ACT. It outlines broad principles for the attribution of authorship and serves as a guide to the proper use of copyright materials. It also sets out a framework which makes it feasible for researchers to carry out research while protecting the rights of clients, staff and volunteers.

UnitingCare NSW.ACT is also committed to ensuring that its involvement with the wider community is based on solid ethical principles. In view of this we seek to respect others' IP and, in turn, expect them to respect the IP of UnitingCare NSW.ACT, and of our clients and staff.

IP consists of anything capable of being recorded. The issues of ownership and control of IP are central to policy development. However, as collaboration with industry partners and academic institutions in jointly funded projects and the use of internet and website material become more common, the associated IP issues become increasingly complex.

IP arrangements are integral to responsible and effective research. The guidelines outlined here have been developed with regard to the four basic ethical principles in UnitingCare NSW.ACT's Research Code of Ethics (2009): respect for all persons; justice or fair

treatment; maximising the benefits from participation in research; and research merit and integrity.

This booklet has been prepared to assist with the development of an awareness of copyright provisions, moral rights issues and confidentiality requirements. Although it does not cover all IP situations, it identifies many issues which should be considered when UnitingCare NSW.ACT researchers and staff are creating and/or using IP. Like the UnitingCare NSW.ACT Research Code of Ethics, the Intellectual Property and Knowledge Policy will be periodically revised as new situations are encountered.

3. Duty of Care

As part of its overall duty of care, UnitingCare NSW.ACT (hereafter the 'Organisation') has an ethical and legal responsibility to protect the rights and interests of its clients, especially more vulnerable groups including children, people in therapy, people who are highly dependent on medical and/or residential care, people in supported accommodation, and people with a cognitive impairment or intellectual disability. It is particularly important to provide protection against any risk of harm or exploitation. This duty of care also extends to the protection of the rights of its staff and volunteers.

As part of this wider duty of care, UnitingCare NSW.ACT protects the rights of staff, students and clients within the Organisation who create IP. In addition to protecting IP rights, UnitingCare NSW.ACT is also obliged to encourage the fair and honest attribution of authorship by those associated with the Organisation, and to provide guidelines on the proper use of all copyright material within the Organisation.

Specific measures to protect IP include:

- Observing copyright provisions and acknowledging moral rights.
- Keeping systematic records of authorship and entitlement to ownership of copyright.
- Safeguarding confidential information.
- Maintaining appropriate database security to ensure confidentiality.
- Maintaining records of persons to whom confidential information has been disclosed.
- Establishing procedures for breaches of confidentiality and infringement of copyright.

4. Copyright and Moral Rights

Copyright refers to the protection of materials from misuse or exploitation by unauthorised persons. Materials covered by copyright include written items such as journal articles, conference papers, a chapter in a book, poems, lyrics, questionnaires, brochures; items such as paintings, photographs, films, documentaries, events, cartoons, sketches, videos, maps, tables/charts, fliers and posters; music, sound recordings, web-sites, computer programs and software.

Copyright arises when you exercise originality in creating a work by applying some degree of your own knowledge, judgment, skill or effort as an author.

Copyright applies to items or works you or your team may have created, such as training manuals, data sets, questionnaires, and reports. It also includes compilations such as directories where no part of the work is original but the work as a whole might be.

Copyright does not protect ideas, concepts, information or facts. What it does protect is the way or form in which they might be expressed. For example, an article about the development of a new child care service or counselling and mediation service would be copyrighted, although the information contained in the article would not be covered. It is the way the information is selected, arranged and presented, and the structure and form the information takes, that is subject to copyright.

Copyright gives the copyright owner a number of exclusive rights over how the work may be used. Generally speaking, these rights include the right to copy, reproduce and publish the work, to perform the work in public, and to broadcast or rent the work.

Moral rights are also attached to copyrighted material and relate to a creator's reputation and their work. Moral rights are not the same as economic rights, but refer to a distinct collection of rights - namely, the right to be identified as the author of a work; the right of the creator to have their name and work treated in a respectful and non-derogatory manner; the right to object to modification or alteration of their work; the right to withdraw their work from the public sphere and to determine when the work should be made public.

It is important to note, however, that sole ownership of copyright does not eliminate the obligations that a researcher has to the people who helped produce the data in terms of how they report and use the results. There is, for example, an obligation to respect the privacy of research participants in terms of not reporting identifying information such as names or other characteristics that might uniquely identify them. In regard to visual materials (such as videotape), the use of the material must be consistent with the consent that was originally given. It is ethically unacceptable, for example, for a person to find themselves in the position where they unexpectedly view themselves in a video that was taken in another context and used without their full knowledge and consent. Additional information is available in the UnitingCare NSW.ACT Research Code of Ethics (2009).

Users of copyright material should be aware of the potential for distortion and misrepresentation when copyrighted material is used out of its original context. Care must be taken to ensure that items are treated with respect. A person infringes the moral rights of an author if he or she distorts an author's work. UnitingCare NSW.ACT staff and

researchers should be careful not to misquote, or add or delete text and then attribute to the author. To do so is an infringement of the author's moral rights.

Moral rights can only be waived if the IP creator consents in writing to a particular action or to a person omitting their name. These rights cannot be transferred - if the originator of the work assigns or licenses the rights to reproduce a work, the moral rights attached to the work remain with the originator.

5. Ownership of Intellectual Property and Copyright

The Copyright Act (1968) sets out rules about copyright ownership. While the general rule is that the first owner of the copyright is the creator of the work, the Act sets out important exceptions to this general rule. For example, where a work is made by an employee (in this case of UnitingCare NSW.ACT or its constituent service groups and agencies) as part of that person's job, the employer usually owns the copyright.

When UnitingCare NSW.ACT enters into partnerships (including research partnerships with universities or other organisations) or external consultancy arrangements it is important that partnership **agreements** and/or contracts specify the maintenance of background IP; the ownership of new IP; the conditions under which a UnitingCare NSW.ACT agency may use IP arising from a project on which it is a partner; and how each organisation involved in the work will formally acknowledge the role of other contributors.

Agreements should also address what is to happen should the results of the project have **commercial value** to either party. For example, it could be stipulated that both parties will enter into further agreement upon terms to be negotiated between the parties in good faith, including how the project IP will be protected and how it will be commercially exploited.

a. Who owns copyright in a website?

A website as a whole is not protected by copyright. The component parts, however, may be protected, and copyright in each of these component parts may be owned by a different person. For example, one or more people may own copyright in the graphics, others may own copyright in the text, others again in the compilation of certain material on the site and yet another person or company may own copyright in the navigation software (Australian Copyright Council, G057, 2008). Where staff members design or develop website content in their role as employees, copyright will generally be owned by the employer.

Whenever an external person is paid to create a website for UnitingCare NSW.ACT or its service groups or agencies, the designer and client should make an agreement that covers:

- Who is responsible for clearing copyright in material owned by someone else;
- Who owns copyright in elements of the completed website;
- Who has the right to make changes to the website;
- Attribution of individuals who have created copyright material in the website; and

- Who is responsible for obtaining any moral rights consents that might be needed (Australian Copyright Council, G057, 2008).

b. Who owns copyright in training materials?

Where training materials (including manuals, training courses or course handouts) are created by an employee of UnitingCare NSW.ACT or its service groups or agencies as part of her or his job, the employer owns copyright. Staff will need to attain permission to incorporate any third-party material into training materials created and ensure they do not infringe the creator's moral rights.

In cases where UnitingCare NSW.ACT and its constituent service groups and agencies (including the Institute of Family Practice - a Registered Training Organisation which is part of UnitingCare Children, Young People and Families) commission training materials from an external consultant, the consultant will own copyright unless agreement is reached to the contrary. As a client, the Organisation will not own copyright but will "get what it paid for". This would generally include the right to be able to use the material for the purposes for which it was commissioned (Australian Copyright Council, G037, 2008).

6. Copyright and Moral Rights

UnitingCare NSW.ACT staff and researchers should be aware that most material produced or used within the Agency is protected by copyright and accordingly be mindful of the conditions of copyright when carrying out research and other IP related activities. In particular, it is important to bear in mind the following:

- Copyright is an automatic process. The work does not have to be published. It exists as soon as the work is created.
- Duration of copyright varies according to the type of material. However, under the Free Trade Agreement with the United States, Australia has agreed to extend the general duration of copyright to the "life of the relevant creator plus 70 years" or where duration depends on year of publication, it lasts until "70 years after it was first published" (Australian Copyright Council, G10, 2007).
- More than one copyright may be contained in one item. For example, a budget kit may contain a range of differently authored items such as photographs, diagrams, forms and text.
- Australian copyright owners are protected overseas and most foreign copyright owners are protected in Australia.
- All copyright rules can be varied by agreement.

7. Infringement of Copyright

Copyright and authorship for commissioned works varies according to the type of item produced. Alternative provisions will generally be negotiated between UnitingCare NSW.ACT and the parties involved. Students, consultants and others contracted by UnitingCare NSW.ACT should be aware that arrangements involving assignments or licensing and special agreements are often required. Under these conditions copyright generally remains with UnitingCare NSW.ACT.

Copyright and authorship issues become considerably more complicated where the IP is the result of collaboration with consultants, other agencies, universities and other funding bodies. These situations are usually dealt with individually and again involve negotiation and special contracts.

Most IP producing partnerships, however, whether large or small scale, have a number of elements in common. It is recommended that when collaborating with other institutions that the following issues be considered:

- Who will have copyright on material produced during the project?
- Will it be corporate authorship or individual authorship?
- How will 'substantial contribution' be defined?
- What will be the order of authorship or acknowledgment (e.g. alphabetical)?

a. An example

It may be agreed that the title page of any papers or articles include the names of the authors with a footnote attached acknowledging the role of the other organisation(s) and any key individuals who need to be thanked. It is also useful to agree ahead of time on the format of the footnote.

While providing assurance of academic freedom to publish, it is nevertheless part of good collaborative practice if each organisation involved agrees to give an advance copy of any conference presentation or journal article arising from the project so that the other partners may have the opportunity to correct any possible factual errors before public release. Prior to expiration of the contract the partner/s will need written permission from UnitingCare NSW.ACT before anything can be published.

Where an IP agreement is negotiated as part of a research project, all those involved in the project must be given a good understanding of its implications.

Students who are not employees of UnitingCare NSW.ACT but who wish to utilise UnitingCare NSW.ACT resources will own copyright on the work they produce unless special arrangements (such as assignment of copyright) have been made. Thesis work produced by a person during their employment with UnitingCare NSW.ACT or its service groups or agencies will be retained by the individual. Acknowledgment of support provided by the organisation (such as paid study leave) is appropriate.

8. Use of Copyright Materials and Confidentiality

Conditions regarding the use of material over which UnitingCare NSW.ACT, its service groups, agencies or clients have copyright vary according to the nature of the data.

Copyrighted works cannot be copied or, in the case of data sets, used without permission of the owner. This is the case even if used for non-profit purposes. Researchers and other users should always check to see who owns copyright on materials they may wish to include in their own work and the conditions governing their use. Conditions of use may be included in the copyright statement.

If a UnitingCare NSW.ACT or service group or agency employee wishes to utilise IP which is not their own, they are obliged to respect the rights of its authors and copyright owners. In this regard it makes little difference if the IP has been generated internally or comes from another institution. In general it is recommended that permission be sought and authorship acknowledged.

If copyright has not expired and no special arrangements have been established, permission must be sought from the copyright owner when wanting to use the material for your own purposes.

It is recommended that when obtaining permission from copyright owners that dated copies of correspondence, notes of conversations and other communications with those who have access to the work be kept as evidence of what is agreed.

It is not uncommon for works produced by UnitingCare NSW.ACT to be requested by other organisations for inclusion in a particular package or presentation. Requests may come from a range of different sources including other agencies, caseworkers and parents. On these occasions it is necessary to examine exactly how the requested materials are to be used and to ensure that they will be treated appropriately. It is essential that users of the end or final product are aware of the conditions of use outlined by UnitingCare NSW.ACT.

There are some exceptions that are not an infringement of copyright including fair dealing for either review or criticism, for research or study or, for the reporting of news. In these situations part of a work can be reproduced provided your use is genuine and fair. The Copyright Act (1968) stipulates that if you are reproducing text from a hard copy edition of 10 or more pages it is fair to copy: 10 per cent of the number of pages; or one chapter, if the work is divided into chapters. For text material published in electronic form, it is deemed to be fair to copy: 10 per cent of the number of words; or one chapter, if the work is divided into chapters. The Act deems that it is fair to reproduce an article from a periodical publication (such as a newspaper, magazine or journal) or more than one article if each article is for the same research or course of study (Australian Copyright Council, G53, 2007).

9. Use of Archive Data and Security

UnitingCare NSW.ACT researchers and staff should ensure that research participants and clients fully understand the implications of inclusion of their data in an archive and how the data will be utilised. Additional information is available in the UnitingCare NSW.ACT Research Code of Ethics (2009).

Data should not be used or allowed to be used for purposes other than those to which the contributor has agreed.

Further Information and Help

If you want more information or assistance please contact:

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