

Wyndham Community and Education Centre Inc Policy and Procedure

Policy name	Intellectual Property Policy & Procedure
Responsible person	CEO, COO, CFO
Staff involved	All Staff, Board members, Volunteers
Review dates	2019
Related documents	<u>Legislation:</u> Copyright Act 1968 (Com), Copyright Regulations 1969, <u>Policies:</u> Complaint's and Appeals Policy and Procedure, Conflict Resolution Policy and Procedure, Conflict of Interest Policy and Procedure, Fraud Policy and Procedure <u>Other:</u> Staff Code of Conduct

Policy context

Wyndham Community and Education Centre Inc. (Wyndham CEC) is responsible for managing its assets, including its intellectual assets, in such a way as to maximise their contribution to the goals of the organisation. Intellectual property is at times an intangible but real asset of an organisation. Its value as an asset means it needs to be protected.

Ideas and original creations exist in every business or organisation. Intellectual property (IP) represents creations by Wyndham CEC that can be legally owned. IP laws allow for protection through patents, trade-marks, copyright, designs, circuit layouts, and plant breeder's rights. Like all businesses, Wyndham CEC has some forms of IP that need to be protected. Some IP rights are automatic while others are granted after application. IP Australia administers patents, trademarks, and design rights while copyright and other rights are overseen by the Attorney-General's Department.

Subject to these responsibilities, Wyndham CEC is committed to the widest possible dissemination of its ideas and findings where these may assist others, as long as the commercial interests of the organisation are protected.

Definitions

IP stands for Intellectual Property. It is the result of application by an individual to create something new or original.

This document was reviewed and accepted by the Board of Governance of the Wyndham Community and Education Centre Inc on 27/04/18 and supersedes all previous versions.

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Copyright is one kind of intellectual property, and the kind that we encounter most frequently. Copyright protection is provided under the *Copyright Act 1968* and is designed to prevent the unauthorised use by others of a work that is in its original form.

Other kinds of intellectual property are trade-marks, patents, designs, circuit layout rights, plant breeder's rights and trade secrets. Automatic protection is given to copyrights, circuit layout rights, confidential information* and trade secrets.

An author is the person who creates a copyright work. A copyright owner is the person or organization which owns the rights in a work or other subject-matter. In many instances the author of a work will be the owner of copyright; however, this need not be the case. An important exception is where copyright works are made by an employee/staff member during the course of their employment**, in which case copyright rests with the employer.***

Document or material (includes but is not limited to): name of the organisation, logo, the Rules of Association, Statement of Purpose, Strategic Plan, Business & Financial Plans, Policies, Procedures and Codes, Forms, training resources and materials, marketing & promotional materials, information sheets, minutes, official stationery or any other document produced from within the organisation which might reasonably be expected to be covered by this policy.

Employee/Staff: Any person employed by Wyndham CEC either as an ongoing staff member, a sessional worker, a casual worker, an independent contractor, a person employed on a short or long term contract.

Volunteer: anyone working as a volunteer within the organisation or as a Board member.

Conflict of interest means where the personal association/s or interest/s of a staff member or a stakeholder interferes with their conduct, duties or responsibilities.

This policy also includes students and clients of the organisation and persons outside the organisation who network or work in partnership with Wyndham CEC and handle intellectual property owned by Wyndham CEC.

**Confidential information* means commercially valuable information and trade secrets, and it may also extend to personal information as well as secret or sacred information usually communicated by indigenous people, which is not in the public domain.

***Course of employment* means any work undertaken by an employee within the scope of their contract of employment, Job Description, industrial instrument, independent consultancy or contract out for services.

*** Attorney General's website <http://www.ag.gov.au>

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Production of Copyright Materials and Intellectual Property

Documents and materials created by staff of Wyndham CEC in the course of paid employment and/or involving the use of Wyndham CEC's facilities or materials shall be the property of Wyndham CEC. Where an employee or volunteer is paid or performs unpaid assigned functions, documents and materials developed, remain the property of Wyndham CEC. Employees engaged in work after hours, such as teachers and trainers preparing materials to be used in the course of their employment, are paid for this work and hence the materials created are the property of Wyndham CEC.

For the purposes of this policy, intellectual property which is created by an employee through any significant utilization of the resources of Wyndham CEC is considered to be intellectual property created in the course of the employee's employment. This shall be the case unless the employee has the prior written agreement of the CEO / COO / CFO or relevant Manager to use Wyndham CEC's resources outside the course of his or her employment to perform the work in the course of which the intellectual property was created.

With the exception of materials created with prior written agreement as described above, all materials that result from activities carried out at Wyndham CEC or developed with the aid of Wyndham CEC's facilities or staff, or developed through funds administered by Wyndham CEC, or paid for by Wyndham CEC as part of a person's employment, will be the property of Wyndham CEC. As such, they may not be published elsewhere, used for research, passed on to a third party or in any other way distributed outside the organisation except by specific prior written agreement with a Manager or the CEO.

Works by independent contractors shall be owned in accordance with the contract under which the work was created. Wyndham CEC will ensure that there is a written contract for work by an independent contractor specifying institutional ownership.

Any dispute between Wyndham CEC and its staff or volunteers, or between staff or between volunteers, on issues of copyright ownership shall be determined by the organisation's Conflict Resolution Policy & Procedure.

Copyright on Wyndham Community and Education Centre Inc.'s materials

All materials produced by or on behalf of Wyndham CEC are automatically copyrighted. Permission to reproduce such materials depends on the category into which they fall.

All materials produced by or on behalf of Wyndham CEC will be classified into one of the following types.

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1. Those materials that are copyright and that cannot be reproduced by any process other than for the purposes of and subject to the provisions of the Copyright Act and any licensing agreement between the user and Wyndham CEC.
2. Those materials that are copyright and that may nonetheless be circulated and/or reproduced as long as any reproduction features specified credits and disclaimers.
3. Those materials that are copyright and that may nonetheless be reproduced without conditions.
4. Those materials that are not copyright.

The Intellectual Property Policy & Procedure of Wyndham CEC is binding on all staff, whether paid or voluntary. The Intellectual Policy & Procedure of Wyndham CEC as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee and shall be included in the induction or orientation given to every volunteer so that staff and volunteers are aware of their obligations. Wyndham CEC expects all staff and volunteers to abide by the legislation in relation to copyrighted materials.

Wyndham CEC owns the intellectual property of all teaching and learning materials created or developed at or for Wyndham CEC, including all associated documents, unless otherwise agreed and authorised by Wyndham CEC in a particular or specific instance.

Wyndham CEC owns the intellectual property of its own ideas, systems and materials created for use across the organization in the delivery of all its products and services. In some cases, staff may be required to sign a confidentiality agreement, particularly if they work in another like organisation.

Students will own the intellectual property they create in a course they enrol in at Wyndham CEC unless subject to the terms of other agreements or otherwise agreed in a specific instance.

Where a student works on a project involving the creation of intellectual property for a Wyndham CEC project, where the work is performed for possible commercialisation, the student can agree to assign any interest she or he may have in the intellectual property, to Wyndham CEC.

Procedure

A copy of this Policy & Procedure must be provided to all current employees, volunteers, students, clients or visitors who are, or may be, engaged in conduct which may result in the creation of intellectual property.

As mandated by the above Policy, all intellectual property created by employees of Wyndham CEC in the course of their employment is owned by Wyndham CEC.

Where a visitor uses the resources of Wyndham CEC to carry out research or other work

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which may result in the creation of commercially valuable intellectual property, it is appropriate for a prior written agreement to be reached regarding the basis upon which those resources are used.

Primary decision-making with respect to intellectual property rests with the CEO and/or the COO / CFO. The onus is on Wyndham CEC staff, students and visitors who may be involved in the creation of intellectual property to familiarise themselves with procedures and requirements as outlined in this Policy.

New staff members who wish to further develop and potentially create new intellectual property from pre-existing intellectual property created in another organisation should alert the Manager of their Service Unit of their intentions.

Compliance with this policy and its procedures is mandatory. Any breach or failure to comply with this policy should be immediately reported to the CEO or delegated authority. Any breach or failure to comply with the policy or use of Wyndham CEC materials without permission, may lead to disciplinary action or to Wyndham CEC taking legal action.