# INTELLECTUAL PROPERTY MANAGEMENT POLICY

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<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>Policy description</td>
<td>This Policy is a guide to the management of intellectual property assets owned, controlled or used by Legal Aid NSW.</td>
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<tr>
<td>Division</td>
<td>Legal Policy, SPP&amp; CP</td>
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<tr>
<td>Director</td>
<td>Director Strategic Planning, Policy and Community Partnerships</td>
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<td>Aideen McGarrigle, Manager, Inhouse Counsel Unit</td>
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<td>Responsibility for IP</td>
<td>Inhouse Counsel Unit</td>
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<td>management</td>
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## Revision History -

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## Policy overview

### Scope and purpose of this policy

The Intellectual Property Management Policy is intended to provide a guide to the management of intellectual property assets owned, controlled or used by Legal Aid NSW.

This Policy has been developed in accordance with the [Intellectual Property Management Framework for the NSW Public Sector](#) (the Framework) issued by the then NSW Premier’s

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Department which outlines mandatory ‘IP principles’ and a ‘Better Practice Guide’ containing recommendations.

The overarching aim of both the Framework and the Policy is to recognise intellectual property as a significant asset and to enable effective management that ‘can optimise the economic [and] social... benefits to the people of NSW’ and in particular the work of Legal Aid NSW.

The application of the Policy and target groups

All Legal Aid NSW Staff (including permanent and temporary employees or contractors) must comply with the Intellectual Property Management Policy. Managers should ensure that all relevant staff members know about the Policy and how to apply it.

If anything in the Policy is unclear, or you are unsure about how to apply the Policy, contact the person listed on the cover page of the Policy.

Legislative environment

Copyright Act 1968 (C’th)
Designs Act 2003 (C’th)
Trade Marks Act 1995 (C’th)

Monitoring, evaluation and review

This document is to be reviewed every two years.

See cover page of this policy for more information about changes to the policy since its release.

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2 NSW Premier’s Department, Director-General Col Gellatly ‘Intellectual Property Management Framework for the NSW Public Sector’ 2005, p3.
Policy and Strategy
1. Agencies are to develop an IP Policy based on this Framework which supports their core functions and service delivery outcomes.
2. Agencies are to develop an implementation strategy for their IP Policy.

Creation and Rights
3. By law, the State of NSW owns any IP developed by its employees in the course of their employment unless it is specifically agreed otherwise. Moral rights are an exception; they automatically belong to the creator in the absence of an agreement to the contrary.
4. Agencies are to ensure that their employees are aware of their legal obligation to respect the IP rights of others, including their moral rights.
5. In all circumstances in which IP might be created or acquired (including employment, outsourcing, grants, procurement, consulting, and contracting agreements) ownership of IP should be specifically addressed.
6. Agencies should take reasonable steps to ensure that the people of NSW have the best opportunity to benefit from the IP, whether the ownership of, or rights to, the IP are vested in the agency, a contracted developer, a collaborative developer, a grant recipient, or other party.

Identification and Recording
7. Agencies should introduce mechanisms to identify and record any significant IP they own, control, or use (refer to Appendix 5 for guidance in determining significant IP). They must also address any issues which emerge in regard to the ownership of the IP. This applies whether the IP is created by staff in the course of their duties, contractors, consultants or others.

Publication
8. Agencies are to establish policies and procedures to manage their publications and websites.

Commercialisation
9. In making decisions about commercialising government IP, the agency must be satisfied that the people of NSW will obtain the maximum benefit. In some cases it may be in the best interest of NSW for the agency to transfer the IP to another government agency, or private industry, either for a fee, a non-commercial fee, or free of charge.
10. Commercialisation decisions are to be made on the basis of appropriate legal, financial and commercial IP advice.

Reporting
11. Information on the management of IP is to be provided in a timely manner by agencies to their Executive, Board of Management, and any other appropriate stakeholders.

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3 NSW Premier’s Department ‘Intellectual Property Management Framework for the NSW Public Sector’ 2005, p 50
1. Introduction

1.1 Intellectual Property (IP) is a generic term for the various rights which the law ascribes to the protection of creative effort. IP is an intangible asset or product resulting from intellectual activity in industrial, scientific, literary or artistic fields.

1.2 The following types of IP rights may be relevant to the activities of Legal Aid NSW:

- Copyright*
- Moral rights*
- Trademarks*
- Designs*
- Confidential information or trade secrets.*

*Refer to Appendix 1 for definition.

1.3 While this list is not exclusive, IP issues may arise in relation to:

- Websites (internal, external, grants, panels)
- Publications, reports, policies, bulletins, maps, tables, diagrams
- Training materials, presentations, videos, films, photographs, paintings
- Staff procedure manuals, business rules, precedents, templates
- Logos, trademarks, letterheads, web page designs, databases
- Submissions, discussion papers, reports, briefing notes, board papers
- Contracts for employment and other service providers or consultants
- Information technology and management information systems (Grants On-Line, E-lodgement and case management systems).

1.4 Legal Aid NSW must protect and utilise any IP assets it owns and/or controls, for the benefit of the general community of New South Wales.

1.5 Legal Aid NSW must comply with the law in relation to any IP assets (not owned by it) that are used by its staff, contractors, consultants and other partners.

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4 Other IP rights are patents, circuit layout rights and plant breeders' rights.
2 - Policy and Strategy

2.1 The Legal Aid NSW Intellectual Property Management Policy (the Policy) provides for the management of the IP assets that Legal Aid NSW holds on behalf of the people of New South Wales.

2.2 The Policy promotes and supports the core functions and service delivery objectives of Legal Aid NSW. Given the unique operation of Legal Aid NSW within the justice sector and the community, it is important that our IP is protected to prevent infringements of our IP material, (see 1.3 above) which consists of specialised and sensitive material connected to delivering legal services, providing community legal education and contributing to the development of policy and law reform.

2.3 The protection of our IP will be enhanced through a risk management approach that appoints the Manager, Legal Policy with responsibility for IP Management including compliance with the Policy. This will involve allocating necessary resources to manage the risk and evaluating the effectiveness of the IP management system.

2.4 It is the responsibility of all staff to be aware of the principles in the Policy and to seek advice on how to deal with any issues that may arise.

3 - Creation and Rights

3.1 Legal Aid NSW will take reasonable steps to ensure that the people of NSW have the best opportunity to benefit from our IP, whether the ownership of, or rights to the IP are vested in the State of NSW, a contracted developer, a collaborative developer, a grant recipient, or other party.

3.2 The State of NSW owns all IP assets that may be developed by NSW State government employees in the course of employment (although moral rights continue to belong to the creator). This is known as “Crown copyright” (refer to the definition in Appendix 1).

3.3 Legal Aid NSW asserts its rights to any IP assets developed by its staff in the course of their employment and contractors, unless otherwise agreed.

3.4 Any IP created by Legal Aid NSW staff is legally owned by the government. Staff or contractors have moral rights in any IP created by them; however, unless otherwise agreed staff will generally not be attributed in official documents.

3.5 Key staff involved in the creation of important IP may be asked to sign agreements to maintain the confidentiality of information both during and after employment.
3.6 Legal Aid NSW will assert copyright in articles published by staff in professional or scholarly journals where the work is:

- commissioned by, or based on research funded by, Legal Aid NSW, or
- written on behalf of Legal Aid NSW, or
- written during the course of their work.

3.7 In relation to any IP assets created by suppliers, service providers or consultants, the IP rights will be dealt with in the contract with consultants or other procurement documentation.

3.8 Generally any contract should provide that Legal Aid NSW retains ownership of the IP.

3.9 If the IP rights are to be retained by the supplier, service provider or consultant, Legal Aid NSW will acquire adequate licenses to enable all reasonable use of the IP to achieve its purposes.

3.10 Legal Aid NSW and all staff, contractors and consultants should take all reasonable steps to ensure that the IP rights of other parties, including moral rights, are not infringed.

4. -Publications and Websites

4.1 Legal Aid NSW produces documents for general circulation and documents not released to the public. In accordance with the NSW Government Open Data Policy a position of open access to information is adopted unless there is an overriding public interest against disclosure.

4.2 The NSW Government Open Data Policy requires NSW agencies to use Creative Commons licences on published material such as websites, print publications and datasets released to the public for general circulation. This is also required for all Australian government agencies and under the Federal AusGOAL Open Access and Licensing Framework.

4.3 A Creative Commons licence (CC licence) enables others to make use of our material on certain conditions and without infringing copyright. There is no need to register to use a CC licence though the licence should be referred to in the material.

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6 Creative Commons Australia, ‘About the Licences’ http://creativecommons.org.au/learn/licences/
7 AusGOAL Open Access and Licensing Framework http://www.ausgoal.gov.au/ -
4.4 There are six standardised creative common licences each with the core condition - of ‘attribution’ which requires that the original creator is credited for their work and the source is provided.

4.5 The default position encouraged for NSW agencies is to publish material under the least restrictive Creative Commons (CC-BY).

4.6 Legal Aid NSW will use a more restrictive CC licence, as follows:
- No Derivative Works - users of our material cannot adapt or change the work in any way; they can only distribute, display and perform actual copies
- Non Commercial - users of our material can only distribute, display and perform our work for non-commercial purposes only.

4.7 A No Derivative Works requirement protects the integrity of the content in our published material and prevents the information from being altered by other users in a way that might undermine the services of Legal Aid by misleading or misinforming the public.

4.8 Legal Aid NSW will not charge a fee for use of our IP information, in line with NSW government principles and to ensure that information is easily accessible for the purpose of providing maximum benefit for the people of NSW. It is in the best interests of our clients that our IP be transferred or shared with other parties free of charge or at non-commercial rates, and that users of our material are unable to copy, distribute and display our work for commercial purposes.

4.9 The appropriate licence to apply to our IP information is the Creative Commons Attribution-Non Commercial-No Derivatives (CC BY-NC-ND)8.

4.10 -For the appropriate copyright marking for this Creative Commons licence as it applies to documents and webpages see Appendix 2.

4.11 -A document that is not considered suitable for releases to the public will not be published and will not fall under this Creative Commons licence however the material is deemed to be the IP of Legal Aid NSW. See Appendix 2 for the appropriate way to mark this material for copyright.

4.12 In addition, a Disclaimer Notice (refer to Appendix 3) may be used if it is considered necessary, having consideration to the contents of the publication.

4.13 Third party material that is not created by the State of NSW should not be included in our materials unless9:
- The copyright owner has expressly authorised the use of the material
- This material should be referenced accordingly and documentation evidencing permission should be kept on file

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8 Creative Commons Australia, ‘About the Licences’ http://creativecommons.org.au/learn/licences/
9 NSW Government, State Copyright Unit ‘Creative Commons Licences: Checklist and guidance’ February 2015.
5 - Sharing of IP

5.1 Legal Aid NSW will provide IP material through community publications under copyright markings that reflect the Creative Commons (CC BY-NC-ND) licence (see 4.4-4.7 above and Appendix 2).

5.2 Legal Aid NSW has a collaborative approach to working with partners in publications and whether Legal Aid NSW owns the IP will depend on the individual contract and which party is funding the publication.

5.3 Where Legal Aid NSW is not the owner of the IP our contribution needs to be attributed and copyright protection applied to the publication.

5.4 Upon request from another party, such as a publisher, to use our IP material, the material will be provided subject to the Creative Commons licence outlined at 4.4-4.7. The other party should be informed of the requirements under this licence to attribute Legal Aid NSW, use the material only for non-commercial purposes and not change the content.

5.5 If there is any doubt or concerns as to whether the material should be provided, given the circumstances or content of the material, staff should consult with the responsible manager in Legal Policy.

5.6 Legal Aid NSW will pay any annual licence fees required by the NSW Department of Justice for the use of copyright materials.

6 - Identification and Recording

6.1 Legal Aid NSW will ensure that IP material is identified according to the Policy and that where another party has requested to use our IP or we have requested to use another party’s IP material, a record is kept of emails or file notes providing evidence of permission.
6.2 As part of the ‘Better Practice Guide’ the Framework recommends that an IP Assets Register be established and maintained to record all significant IP assets that are owned or controlled, and any significant IP assets that are used which belong to other parties.10

6.3 Following a review of the Policy in November 2018, Legal Aid NSW will consider whether an IP Assets register should be introduced based on the effectiveness of the Policy and the potential need to improve the recording and risk management of IP.

7 - Logos and Names

7.1 Legal Aid NSW uses the following corporate logo in its letterhead and other communications:

![Legal Aid Corporate Logo](image)

7.2 At present our corporate logo is not registered as a trademark so is not protected as part of our IP.

7.3 Legal Aid NSW will take all reasonable steps to have its corporate logo registered as a trademark. In the absence of such trademark registration, Legal Aid NSW will rely on copyright protection for its corporate logo.

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APPENDIX 1 - DEFINITIONS -

Copyright
Copyright is a type of legal protection for people who express ideas and information in certain forms. The most common forms are writing, visual images, music and film. Copyright protects the form or way an idea or information is expressed, not the idea of information itself.

Crown copyright
The Copyright Act 1968 provides that government agencies (referred to in the Act as “the Crown”) are the owners of copyright in original work made, or first published, under their direction or control.

Moral rights
Moral rights belonging to authors or creators are rights which relate to a person’s reputation as the author or creator of a work. These are granted only to individuals, generally last as long as the copyright in the work, and apply to a wide range of works.

The Copyright Act 1968 recognises three moral rights:
• the right to be named as the author or creator of the work,
• the right not to have authorship of the work falsely attributed, and
• the right not to have the work altered in a prejudicial way.

Trade marks
A trade mark is used to distinguish the goods and services of one trading or business entity from another. It can take the form of a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these.

Trade mark registration is used to protect brand names or business, company or domain names.

Designs
A design comprises the visual features of shape, configuration, pattern or ornamentation which give an article its unique appearance. To be registrable, a design must be new and distinctive. Designs which are essentially artistic works are covered by copyright legislation and are not eligible for design registration.

Trade secrets
A trade secret is a special form of confidential information held within a trade or business (for example, a process, method, plan or formula), the disclosure of which to a competitor would be liable to cause significant harm to the owner.
APPENDIX 2 – COPYRIGHT PROTECTION FOR PUBLICATIONS

Document Statement
The following should be inserted in the footer of documents to ensure the material is covered by the CC licence:

©Legal Aid Commission of NSW 2017. [You may copy, print, distribute, download and otherwise freely deal with this work for a non-profit purpose provided that you attribute Legal Aid NSW as the owners. To reproduce or modify the work for any other purpose you need to ask for and be given permission by Legal Aid NSW.]

*The provision inserted in brackets is to be included where practical given the size of the publication and/or relevant in the context of publication

Website Statement
The following should be inserted at the bottom of the webpage to ensure the material is covered by the CC licence:

©Legal Aid Commission of NSW 2017. All Legal Aid NSW Material on this website is licensed under the Creative Commons Attribution-Non Commercial-No Derivatives 4.0 licence (apart from any State arms, symbols or trademarks).

See http://creativecommons.org/licenses/by-nc-nd/4.0 for details.

Please give attribution in this form: -
© the Legal Aid Commission of NSW. For current information go to [website URL]. -

Statement to acknowledge images
The following should be inserted in PowerPoint and webinar presentations to account for the use of images created by others:

In preparing this presentation Legal Aid NSW has met all our legal copyright and intellectual property obligations.

Statement for documents that are not released to the public
The following should be inserted:
© the Legal Aid Commission of NSW.

11 NSW Government, State Copyright Unit ‘Creative Commons Licences: Checklist and guidance’ February 2015.
APPENDIX 3 - DISCLAIMER NOTICE

Document statement
This publication is a general guide to the law. You should not rely on it as legal advice. We recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing. However it may change. For more information contact LawAccess NSW on 1300 888 529.

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