

Intellectual Property Ownership & Management

Written Direction No. WDCSG19203

Approved by: General Manager, Governance, Legal & Risk

Approval Date: 25 February 2019

Effective From: 1 March 2019

1. Introduction

TAFE NSW recognises that Intellectual Property is a valuable asset, and is committed to establishing a framework for the ownership, management and commercialisation of Intellectual Property within TAFE NSW.

2. Purpose

To establish a policy for the ownership, management and commercialisation of Intellectual Property within TAFE NSW, including Intellectual Property created by TAFE NSW Employees, Students and Visitors.

3. Scope

This Policy applies to all TAFE NSW Employees, Students and Visitors of TAFE NSW.

4. Policy

This Policy sets out the principles of ownership, management and commercialisation of Intellectual Property within TAFE NSW.

4.1 Ownership of Intellectual Property

4.1.1 Intellectual Property created by employees

- a) Subject to section 4.1.1(c) and (d), TAFE NSW will own all Intellectual Property created by an Employee in the course of, or incidental to, their employment at TAFE NSW, including but not limited to:
 - i. teaching and learning material, including course material, training and assessment strategies, assessment and examination material and any other learning resources;
 - ii. computer programs, including course software;
 - iii. administration material, including policies and procedures, reports, business plans and processes, marketing and promotional material; and
 - iv. any other material created at the express request or direction of TAFE NSW.
- b) Without limiting anything else in an Employee's terms of employment, TAFE NSW may require an Employee to sign an agreement to recognise TAFE NSW's ownership of such Intellectual Property or for the purpose of assigning ownership of such Intellectual Property to TAFE NSW.
- c) TAFE NSW makes no claim of ownership to any Intellectual Property created by an Employee outside the course of their employment at TAFE NSW, provided no TAFE NSW resources or material (including but not limited to funds, services, labour, facilities, equipment or other materials) have been used to create that Intellectual Property.

- d) Employees who bring existing Intellectual Property to TAFE NSW to be used in the course of their employment at TAFE NSW, must notify their manager and provide evidence of ownership when providing that Intellectual Property to TAFE NSW. This will ensure that their ownership and contribution to Intellectual Property created or used at TAFE NSW will be recognised.

4.1.2 Intellectual Property created by Students

- a) TAFE NSW makes no claim of ownership to any Intellectual Property created by a Student in the course of their studies at TAFE NSW, unless the Intellectual Property was created as part of the Student's involvement in a TAFE NSW Project.
- b) If an Employee is also enrolled as a Student and the Intellectual Property is created by the Student in the course of their employment at TAFE NSW, then TAFE NSW will own the Intellectual Property.
- c) Where a Student creates or is involved in the creation of Intellectual Property as part of a TAFE NSW Project, TAFE NSW may require the Student to assign their Intellectual Property rights to TAFE NSW as a pre-condition to participating in the TAFE NSW Project.
- d) It is the responsibility of the head of the TAFE NSW Project to ensure that the Student is notified about the requirements of participating in the TAFE NSW Project, including any requirement for the Student to assign their Intellectual Property rights to TAFE NSW.
- e) TAFE NSW recommends that Students seek independent legal advice before entering into any document which assigns their Intellectual Property rights.
- f) If the Student declines to comply with these requirements (including any requirement for the Student to assign their Intellectual Property rights to TAFE NSW), TAFE NSW may refuse to permit the Student to participate in the TAFE NSW Project. If it does so, TAFE NSW may assist the Student in identifying an alternative TAFE NSW Project.

4.1.3 Intellectual Property created by Visitors

- a) Agreements relating to a Visitor's work at TAFE NSW, including ownership rights relating to Intellectual Property created during such work, must be agreed and signed prior to the commencement of the work.
- b) Intellectual Property created by a Visitor in relation to their work at TAFE NSW, will be owned by TAFE NSW unless otherwise agreed in the terms of the agreement relating to the Visitor's work at TAFE NSW.

4.1.4 Intellectual Property created with external funding

- a) Where TAFE NSW creates Intellectual Property using third party funding and / or resources, the Intellectual Property rights will be owned by TAFE NSW unless otherwise agreed with that third party

4.2 Moral Rights

- a) TAFE NSW acknowledges and will use reasonable efforts to observe the Moral Rights of individual creators of Intellectual Property in accordance with the Copyright Act 1968 (Cth).

4.3 Indigenous Knowledge and Culture

- a) TAFE NSW makes no claim of ownership to any Intellectual Property in Indigenous Knowledge and Culture.

- b) Where the creation of TAFE NSW Intellectual Property involves Indigenous Knowledge and Culture, TAFE NSW will:
 - i. consult with relevant Indigenous groups for the purpose of ensuring that those interests are recognised and protected in accordance with applicable Indigenous protocols and Australian laws; and
 - ii. ensure that such arrangements are documented.

4.4 TAFE NSW Intellectual Property

4.4.1 Use of TAFE NSW Intellectual Property

- a) TAFE NSW owned Intellectual Property must only be used by Employees in the course of their employment at TAFE NSW, unless otherwise approved by TAFE NSW in accordance with this Policy.

4.4.2 Copyright attribution

- a) All TAFE NSW owned Intellectual Property which is subject to copyright, should include the following copyright statement:
 - © TAFE NSW [year of production e.g. 2019]
- b) The copyright statement should be clearly visible and would normally be included in the footer of a document or at the end of a video / audio file.
- c) Any copyright attribution or other ownership attribution associated with any TAFE NSW or third party Intellectual Property must not be removed or obscured.

4.5 Third Party Intellectual Property

4.5.1 Use of Third Party Intellectual Property

- a) Employees and Students must ensure that they do not infringe the Intellectual Property rights of any third parties. Intellectual Property belonging to third parties must not be used unless there is an express right to do so.
- b) It is important to carefully document the conditions of use of all third party Intellectual Property, which generally involves TAFE NSW entering into an appropriate licence agreement with the third party.

4.5.2 Copyright compliance

- a) Copyright compliance is managed by TAFE NSW under the Copyright Act 1968 (Cth).
- b) TAFE NSW has certain rights under the Copyright Act 1968 (Cth) to reproduce and communicate copyright material for educational purposes, subject to TAFE NSW's contractual arrangements with collecting societies and individual copyright owners.
- c) In order to ensure and maintain copyright compliance, all training and course material provided to or accessed by Students for which TAFE NSW does not own the copyright, must be approved and managed through the relevant SkillsPoint and the Manager, Library Resource Management Services.
- d) The Manager, Library Resource Management Services is responsible for managing TAFE NSW's contractual arrangements with collecting societies and individual copyright owners, including managing licence administration and compliance.

4.6 Commercialisation by TAFE NSW

4.6.1 Commercialisation of Intellectual Property

- a) Where an Employee creates any Intellectual Property that they believe is capable of commercialisation, they must:
 - i. notify that fact to:
 - A. the Chief Education and Training Officer where it relates to teaching and training material or resources;
 - B. the General Manager, TAFE Digital where it relates to digital or online teaching and training material or resources; or
 - C. the Managing Director where it relates to any other Intellectual Property; and
 - i. provide full details of the Intellectual Property created and all other relevant information required by TAFE NSW to properly assess its commercial potential.
- b) Once TAFE NSW has been notified of any Intellectual Property that may be capable of commercialisation, the relevant officer will decide if TAFE NSW will commercialise it, having regard to the potential commercial returns and strategic benefits to TAFE NSW and Intellectual Property protection options. In deciding whether to commercialise the Intellectual Property, the relevant officer must consult with the originator and any other relevant persons, including the Legal Services Unit, to consider what arrangements should be put in place in relation to Intellectual Property ownership and use.
- c) If a decision is made to commercialise the Intellectual Property, the originator must provide TAFE NSW with all reasonable assistance necessary for TAFE NSW to commercialise it.

4.7 TAFE NSW Branding, Trademarks and Business Names

4.7.1 Brand protection

- a) TAFE NSW's brand is a valuable asset, and Employees are required to act in ways that protect and promote the brand.
- b) Any use of TAFE NSW branding must comply with relevant legislation, the TAFE NSW Branding Guidelines, the NSW Government Brand Guidelines and any other relevant TAFE NSW policy.

4.7.2 Co-branding

- a) The use of TAFE NSW branding alongside the branding of any third party organisation (for example, as part of a partnership, collaboration or sponsorship arrangement), must be approved by the TAFE NSW Industry and Partnership Marketing Unit.
- b) Use of the TAFE NSW brand in association with any jointly conferred award / certificate, including the design of testamurs, must comply with the Standards for Registered Training Organisations (RTOs) 2015 pursuant to the National Vocational Education and Training Regulator Act 2011 (Cth) (as amended from time to time), and must be approved by the General Manager, Student Services in consultation with the Chief Education and Training Officer.

4.7.3 Creation and Registration of Intellectual Property

- a) The creation of other branding potentially detracts from the impact and recognition of TAFE NSW's approved branding. In order to protect and promote TAFE NSW's brand, any proposed branding that introduces a new visual identifier (for example, logo, art work, graphics, images, slogans, trademark, domain name or business name) must be approved by the General Manager, Marketing and Communications, having regard to any commercial or other benefits.

- b) The Legal Services Unit is responsible for managing TAFE NSW’s Intellectual Property portfolio. Where approval is granted to proceed with the creation and protection of TAFE NSW Intellectual Property, the Legal Services Unit will be responsible for preparing and submitting any registration application.
- c) All applications for registration of TAFE NSW Intellectual Property will be made in the name of TAFE NSW. The cost of filing applications will be borne by the relevant TAFE NSW organisational unit to which the TAFE NSW Intellectual Property relates.
- d) Employees and Students must not apply for registration of, or rights associated with, TAFE NSW Intellectual Property in their own name.

5. Responsibilities

Position	Responsibility
Chief Operating Officer	The Chief Operating Officer is the Approver for this Policy
All Employees of TAFE NSW	Employees of TAFE NSW are required to comply with this Policy.

6. Definitions

Term	Meaning
Employee	A person employed by TAFE NSW, whether on a permanent, fixed-term, casual, part-time or trainee basis.
Indigenous Knowledge and Culture	Traditional knowledge and traditional cultural expressions of Indigenous Australians, including stories, dance, languages, symbols, crafts, cosmology, medicinal and environmental knowledge.
Intellectual Property	All current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
Moral Rights	Has the meaning given to that term in the Copyright Act 1968 (Cth).
Student	A person who is enrolled in a course or a program of study at TAFE NSW.
TAFE NSW Branding Guidelines	The TAFE NSW branding guidelines issued by TAFE NSW from time to time, including the “TAFE NSW Brand Book”.

Term	Meaning
TAFE NSW Project	<p>Any project or program of work administered by TAFE NSW which may involve the creation of Intellectual Property, including any project or program of work that is:</p> <ul style="list-style-type: none"> - funded by a third party or subject to an arrangement between TAFE NSW and a third party; - funded by the specific allocation of additional funds or resources above that which is ordinarily provided; and/or - established by a team involving a Student and at least one Employee.
Visitor	<p>A person or organisation who visits or is given access to any TAFE NSW premises, facilities, systems or resources for the purpose of undertaking any teaching, research, service or other activity (including any third party contractor or consultant), who is not an Employee or Student.</p>

7. Related documents

This policy should be read in conjunction with the following related documents:

- a. [TAFE NSW Brand Book](#)
- b. [NSW Government Brand Guidelines](#)
- c. [TAFE NSW Joint Testamur Procedure](#)
- d. [Copyright Statement for Training Products](#)
- e. [TAFE NSW Delegations Manual](#)

8. Contacts

Accountable Officer General Manager, Governance, Legal and Risk
 Written Direction Officer Head of Legal, Governance, Legal and Risk

9. Document information and review

This policy document will be reviewed at least every three years.

Record No. DOC19/37706

Review Due: 1 MARCH 2022

Approval History

No	Effective	Approved by	Amendment
1	1 March 2019	Chief Operating Officer	N/A – Version 1