

# INTELLECTUAL PROPERTY GUIDELINES

Responsible:	General Counsel
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Related Policy:	Intellectual Property Policy

The ABC's intellectual property is an important and valuable asset of the organisation.

The ABC must carefully manage and protect its intellectual property to ensure the ABC's audiences obtain the maximum value from the ABC's investment in its creation.

## INTELLECTUAL PROPERTY RIGHTS

'Rights' or 'intellectual property rights' describe legal rights in news articles, programs, documents, research notes, photos, footage, audio recordings, text, titles, graphics, logos, trade marks, formats, production bibles, scripts, outlines, treatments, inventions, domain names, computer code, trade secrets, and other such material (whether published or unpublished). The 'legal rights' include copyright, and rights to trade marks, confidential information and patents.

These Guidelines sets out circumstances in which the ABC owns or acquires intellectual property rights in material created by employees and contractors.

## PURPOSE OF THESE GUIDELINES

These Guidelines deal with three purposes:

### 1. Employees and ABC Intellectual Property

The first purpose is to make you aware of the circumstances in which intellectual property is owned by the ABC and whether an employee can use ABC intellectual property in external work.

### 2. Contractors and ABC Intellectual Property

The second purpose is to set out a process for the acquisition of rights in material developed, produced, co-produced, or acquired by the ABC to ensure the ABC maximises the benefit to the ABC and its audiences now and in the future.

### 3. Risk Management

The third purpose is to set out a process for managing risk relating to rights.

## WHO AND WHEN

These Guidelines apply to all ABC employees, work experience students, interns and all ABC volunteers. It also applies to our dealings with third parties such as contractors, co-creators, licensees, licensors, co-producers and the public.

## **OUR COMMITMENT**

The ABC is accountable for the resources it uses to develop, produce, co-produce and acquire intellectual property.

The ABC seeks to balance the public interest in the ABC maintaining and controlling intellectual property it develops, produces, co-produces or acquires with the private interests of co-creators, participants, licensees, licensors, co-producers and others.

The ABC recognises Indigenous cultural and intellectual property rights and has undertaken in its ABC Elevate Reconciliation Action Plan 2019 – 2022 to ensure that Indigenous communities and individuals retain intellectual property ownership of cultural knowledge and languages that they share with the ABC.

## PART 1 – EMPLOYEES AND ABC INTELLECTUAL PROPERTY

### YOUR OBLIGATIONS

You must:

- treat the ABC's intellectual property with respect;
- protect the ABC's intellectual property; and
- not use, license, give away or otherwise supply the ABC's intellectual property externally or use for personal purposes, without written approval.

### OWNERSHIP OF INTELLECTUAL PROPERTY

#### ABC intellectual property

The ABC owns any intellectual property created or developed by its employees “*in the course of their employment*” with the ABC.

You are acting *in the course of your employment* with the ABC if you are acting within the scope of your normal duties or the activities covered by your position description, i.e. if the intellectual property is the product of what you are employed to do. If you are unsure whether you are acting *in the course of your employment*, some other indicators that you are so acting might be:

- you created or developed the relevant intellectual property during your ABC working hours;
- you used ABC resources including any ABC premises, equipment, facilities, personnel and existing ABC intellectual property; or
- you acted on the specific direction or request of the ABC.

However, the fact that you work on a project at home or other external location outside office hours does not necessarily mean that you are not acting *in the course of your employment*.

All intellectual property rights in any news articles, programs, documents, research notes, photos, footage, audio recordings, text, titles, graphics, logos, trade marks, formats, production bibles, scripts, outlines, treatments, inventions, domain names, computer code, trade secrets, and other material that you create or develop *in the course of your employment* (whether published or unpublished) is owned by the ABC.

You should keep in mind that the ABC's intellectual property also includes any information which is confidential to the ABC. This includes ABC business and financial information.

Any ideas, pitches or proposals that you create or develop *in the course of your employment* must first be presented to the ABC for consideration before any personal or external use (for example, if you work for an investigative current affairs program and have worked on a pitch for a documentary at home on the weekend this work might still be considered to be *in the course of your employment*).

If a manager is unsure whether a person is acting “in the course of their employment”, this should be discussed with the Employee Relations team in People & Culture.

You cannot use any ABC trade marks (such as the ABC logo) or branding, including any co-branding of external work, without approval. However, you are permitted to state that you are employed by the ABC and the capacity in which you are employed. You should refer to the Brand and Identity Policy for more information on use of ABC branding.

## **An employee's personal intellectual property created outside of ABC employment**

You will own any intellectual property that you create or develop which is *outside* of the course of your employment with the ABC. For example, if you are employed in Finance but write a novel outside of ABC working hours unrelated to any of your duties or work at the ABC, this will be your intellectual property. Please refer to the External Work and Editorial Conflicts Editorial Guidance Note for more information on undertaking external work.

Original posts that you make on your personal social media accounts (not on an official ABC social media account or reposting ABC content, or otherwise as part of your normal duties) are also your personal intellectual property, even if the posts relate to the ABC. You should refer to the Social Media Policy for further information on your personal and professional use of social media.

## **EXTERNAL WORK USING ABC INTELLECTUAL PROPERTY**

There may be situations where you wish to undertake external work which may involve ABC intellectual property. You will need approval from the ABC in order to use this ABC intellectual property.

- **New ideas and material:** If you create or develop a new idea or *material in the course of your employment* that the relevant ABC genre team does not wish to pursue but you would like to pursue this idea or material externally (for example, if you pitch a show which is rejected and you would like to take the pitch elsewhere), this subject matter (e.g. the pitch) is ABC intellectual property at law and is confidential to the ABC. You will need approval to use this intellectual property externally.
- **Use of existing content or other material:** If you want to adapt, use or otherwise rely on any ABC content or other material externally (for example, if you plan to write a book expanding on a news report that you wrote), this ABC content or material is ABC intellectual property and you will need approval to use it.

In each of these scenarios, you must make a request to your line manager or to the commissioning producer or manager you are working with to obtain approval from the ABC. Your manager will need to consult with ABC Commercial in accordance with the guidelines for dealing with employees using ABC intellectual property set out below and the Re-Use of ABC Content Guidelines. Your manager must record the decision in writing. Approval may be conditional on a licence fee or certain conditions (such as providing the ABC a first and matching right to broadcast or distribute the work).

It is important that consistent principles and judgements are applied as far as possible, both within teams and across the ABC. It is therefore important for managers to retain information about not only the decisions that are made but the reasoning behind them, so that both employees and the ABC itself can ensure that guidance is followed on as consistent and predictable a basis as possible.

For further information on undertaking external work, you should refer to the:

- External Work and Editorial Conflicts Editorial Guidance Note; and
- Conflict of Interest Policy.

## **WORKING ACROSS TEAMS IN THE ABC**

There may be situations where you are undertaking work across teams in the ABC which may raise questions about intellectual property.

If you are employed in a genre team and you make a pitch or engage in work for another team within the ABC (for example, if you work on a radio program and you pitch a television show), this work may still be considered *within the course of your employment*, even if you involve external parties. You should consult with your line manager to determine the terms on which you will undertake the work, in accordance with the guidelines for dealing with employees using ABC intellectual property set out below.

## **GUIDELINES FOR DEALING WITH EMPLOYEES USING ABC INTELLECTUAL PROPERTY**

The following sets out guidelines for relevant line managers to determine:

- the basis on which approval may be granted to an employee to use ABC intellectual property externally; and
- how an employee undertaking work across teams should be engaged in respect of their work.

### **Granting Approval**

#### ***Initial considerations***

If the answer to the threshold question: *‘Has the material been created by the employee “in the course of their employment” with the ABC?’* is yes (see above *Ownership of intellectual property*), then the following considerations are also relevant. If not, then that material is owned by the employee, and no approval will be required.

When considering whether to give approval (i.e. technically a “licence”) to an employee to use ABC intellectual property externally, the relevant manager should ask:

1. Are there any conflicts of interest? Refer to the Conflict of Interest Policy for further information on conflicts of interest.
2. Is the work the result of a collaboration with others? If so, consider whether those collaborators who have been integral to the creation of the ABC intellectual property should be acknowledged.

If the manager is satisfied that there are no conflict issues and has determined whether any relevant collaborators should be acknowledged, then they should consult with ABC Commercial on whether approval should be granted and the terms of any approval.

#### ***Terms of the approval***

There are several different types of approvals which may be granted in respect of ABC intellectual property, such as:

- approval in perpetuity with no conditions, fees or royalties;
- approval with a requirement to give the ABC credit. This may include a credit to other ABC employees whose contribution and collaboration have been integral to the creation of the ABC intellectual property;
- approval with an initial fee or a royalty for the ABC if it is commercialised;
- approval conditional on or with an option for ABC to acquire rights (e.g. a first and matching right to broadcast or distribute the work).



When determining the type of approval to be granted to an ABC employee for use of ABC intellectual property, in addition to the factors set out in the Re-Use of Content Guidelines in relation to external use of content, the manager must keep in front of mind the best interests of the ABC as a whole, including consideration of:

- the opinion of other senior delegates and ABC Commercial;
- the ABC's relationship with the employee;
- the ABC's reputation as an employer; and
- the importance and value of the intellectual property to the ABC.

### ***If working across teams***

Where an employee is employed in a genre team and they have pitched an idea to, or wish to work for, another team within the ABC, the relevant manager should consult with the Employee Relations team in People & Culture to determine whether such work should be a variation to their employment agreement or if they should be engaged as an independent contractor for this work. The manager should consider who should own the intellectual property, however, in most cases the intellectual property would be owned by the ABC.

### ***Record of decision***

It is important that consistent principles and judgements are applied as far as possible, both within teams and across the ABC. It is therefore important for managers to retain information about not only the decisions that are made but the reasoning behind them, so that both employees and the ABC itself can ensure that guidance is followed on as consistent and predictable a basis as possible.

## **OTHER MATTERS FOR EMPLOYEES**

If you are an employee of the ABC, you also have obligations under *the Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**), which should be considered when dealing with intellectual property.

Under the PGPA Act, your obligations include:

- not improperly using your position to gain, or seek to gain, a benefit or advantage for yourself or another person or to cause, or seek to cause, detriment to the ABC, the Commonwealth or any other person; and
- not improperly using information you obtain because of your employment with the ABC to gain, or seek to gain, a benefit or advantage for yourself or another person, or to cause, or seek to cause detriment to the ABC, the Commonwealth or any person.

Employees should refer to the PGPA Act for further information.

## **RELATED DOCUMENTS**

Part 1 of these Guidelines should be read in conjunction with the following related documents:

- Editorial Policies
- Editorial Guidance Note: External Work and Editorial Conflicts
- Conflict of Interest Policy
- Re-Use of ABC Content Guidelines
- Social Media Policy

- Brand & Identity Policy

## **GENERAL**

Part 1 of these Guidelines summarises some of the rights and obligations which arise by operation of law. These Guidelines are not intended to go beyond the law. If you are an employee, you should read these Guidelines in conjunction with your ABC employment agreement, but it does not form part of your employment agreement.

## PART 2 – CONTRACTORS AND INTELLECTUAL PROPERTY

### YOUR OBLIGATIONS

You must ensure you get good value for money when you negotiate rights with a contractor.

In addition, when you develop, produce, co-produce or acquire content, you must:

- apply the Rights Guiding Principles to maximise the distribution opportunities for the ABC's audiences.
- maximise the value of content to the ABC and its audiences.
- consult with Business Affairs, Entertainment & Specialist on the fees payable to contractors.
- adhere to any applicable industry agreements.
- recognise Indigenous cultural and intellectual property rights and ensure that Indigenous communities and individuals retain intellectual property ownership of cultural knowledge and languages that they share with the ABC.

### INTELLECTUAL PROPERTY CREATED FOR THE ABC BY CONTRACTORS

The ABC develops, produces, co-produces and acquires content to meet its charter and obligations under the *Australian Broadcasting Corporation Act 1983* (Cth). ABC content is a valuable historical, cultural and commercial asset. The rights in this content are a key asset of the ABC.

The ABC must carefully manage rights to maximise the benefit of this content to the ABC and its audiences now and in the future.

The ABC's preferred position is that the contractor assign to the ABC all intellectual property specifically created or developed by the contractor in relation to the services being provided to the ABC. Please contact Business Affairs, Entertainment & Specialist or Legal for guidance.

Contractors of the ABC should refer to their specific agreement with the ABC which will set out the ownership of intellectual property.

In relation to creative contributions, there may be industry agreements and standards that regulate the rights granted to the ABC.

### INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

The ABC recognises Indigenous cultural and intellectual property rights and has undertaken in its ABC Elevate Reconciliation Action Plan 2019 – 2022 to ensure that Indigenous communities and individuals retain intellectual property ownership of cultural knowledge and languages that they share with the ABC.

If you have any questions about Indigenous cultural and intellectual property, you can contact the Bonner Committee, the ABC's primary advisory body on issues relation to Aboriginal and Torres Strait Islander staff, content and communities, as they serve as the Corporation's representative voice on Indigenous matters: s 47E(d)



## PART 3 - RISK MANAGEMENT

### YOUR OBLIGATIONS

You must:

- familiarise yourself with rights and undertake rights training from time to time if you deal with intellectual property rights in the course of your employment;
- manage risk relating to rights in the best interests of the ABC;
- refer up risk in relation to rights to the nominated senior delegate when the relevant risk is not low or where taking the risk repeatedly may give rise to significant liability for the ABC over the long term.

### MANAGING RISK

Exercising a third party's intellectual property may give rise to a liability for the ABC if you do not have appropriate clearance in the form of a licence or statutory defence such as fair dealing. An example of such risk would include where your team publishes online content and you have not been able to clear the relevant rights in a third party photograph being used in that content; or where you wish to use music in a podcast which will be available throughout the world and you have not been able to clear all the rights in the music.

The Managing Director and the Executive Leadership Team are ultimately responsible for managing risk in relation to rights. The ABC manages risk in relation to rights in accordance with an upward referral process.

The Director of each team must nominate a senior delegate as the person to manage risk in relation to rights within their team. For ABC Commercial the senior delegate is the General Manager, Commercial. The nominated senior delegate may refer up to the relevant Director, who may refer up to the Executive Leadership Team and to the Managing Director.

### ASSISTANCE

For assistance with rights, please contact the following:

- Business Affairs, Entertainment & Specialist – s 47E(d)
- ABC Legal, Rights Management – s 47E(d)
- ABC Legal, Acquisitions & Production – s 47E(d)

### Related documents

Parts 2 and 3 of these Guidelines should be read in conjunction with the following related documents:

- Rights Guiding Principles (TBC)
- Re-use of Content Guidelines
- Conflict of Interest Policy
- 5 Year Plan
- Content Plan
- Distribution Strategy (TBC)
- E&S Commissioning Guidelines (as applicable)
- E&S Acquisitions Guidelines

- Procurement Guidelines

### **General**

Not applicable to Parts 2 and 3.

### **Questions?**

If you have any questions about these Intellectual Property Policy, these Guidelines or your obligations, please contact:

for Part 1 – Employees and ABC Intellectual Property - the Legal Counsel in People & Culture;  
for Parts 2 and 3 – Contractors and ABC Intellectual Property - ABC Legal.