

Intellectual Property Policy

Policy - CP029

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1. The purpose of this policy is

To provide guidelines on the application of the principles of intellectual property rights and how these principles affect the activities of Mildura Rural City Council.

2. Policy Statement

Intangible assets, like brand names, technology and information, have become increasingly important and, as a result, valuable to any organisation.

Employees of Mildura Rural City Council are likely to create intellectual property of value every day which adds to the intangible assets of Council. This intellectual property may include:

- reports, correspondence and papers being written in which copyright may subsist under the *Copyright Act* (Cth) 1968 (the "Copyright Act");
- new brand names or logos being devised which should be the subject of trade mark applications under the *Trade Marks Act* 1995 (Cth) (the "Trade Marks Act"); and
- new software being written which could be the subject of copyright protection as a literary work under the Copyright Act or could be the subject of a patent application under the *Patents Act* 1990 (Cth) (the "Patents Act").

Given the importance of intellectual property rights, Mildura Rural City Council employees should act in a way that seeks to maximise and protect the value of the Council's intellectual property, while simultaneously avoiding infringing the intellectual property rights of third parties. The information below is intended as a guide to the various intellectual property legislative schemes and to provide guidance to Mildura Rural City Council employees in their dealings with intellectual property; where it is owned by the Mildura Rural City Council and also where it is owned by third parties.

3. Principles

3.1 COPYRIGHT

3.1.1 General

Under the Copyright Act, copyright is the exclusive right to do, or authorise others to do, a number of specified acts including the right to reproduce the work and the right to publish the work.

Broadly speaking, copyright protects literature (which includes text, tables, compilations as well as computer programs), artistic works (which includes drawings, maps and charts), music, dramatic works, films and broadcasts from unauthorised copying by others.

Copyright may subsist in many of the documents produced by Mildura Rural City Council employees each day such as marketing plans, business reports and information, photographs or graphics included on the Mildura Rural City Council website.

It is highly recommended that staff read any licence conditions attached to material Council has (e.g. aerial imagery & GIS data) before agreements are made to supply documents or enter into a contractual arrangement.

3.1.2 Ownership of Copyright

The general principle is that the creator of a work is the owner of the copyright in that work. If, however, the creator of the work is an employee and creates the work in their course of employment, then the employer is the owner of the copyright. This means that Mildura Rural City Council is the owner of all copyright created by its employees during the course of their employment.

Where the creator of the work is an independent contractor, however, unless there is an agreement in writing to the contrary, the independent contractor owns the copyright in the work. Where an independent contractor, such as an external advertising agency, creates work in which copyright subsists for the Mildura Rural City Council, unless there is an agreement to the contrary, the Mildura Rural City Council will have an implied licence to use the copyright in the work for the purpose for which it was created. If there is a chance that Mildura Rural City Council may wish to use the work in the future for a purpose other than the purpose for which the work was created, Mildura Rural City Council employees should arrange a licence agreement with the creator which provides Mildura Rural City Council with an unrestricted licence to use the copyright for any future purposes.

On the rare occasion where Mildura Rural City Council wishes to commercialise the work created by an independent contractor (rather than simply use it for Mildura Rural City Council's own purposes),

Mildura Rural City Council employees should seek to have copyright in the work formally assigned in writing to Mildura Rural City Council.

3.1.3 Originality

Copyright only subsists in works if they are original. Under the Copyright Act, this simply means that the work must not have been copied from another source.

3.1.4 Registration

There is no registration system in Australia for copyright. Copyright subsists automatically on creation of the original work. Where a work is being published, however, Mildura Rural City Council employees may wish to use the copyright symbol © to notify others that Mildura Rural City Council owns copyright in the work. Any such copyright notice should include the word "copyright" or the copyright symbol ©, "Mildura Rural City Council", and the year in which the work was created.

3.1.5 Infringement of Copyright

The copyright in a work is infringed if a person does, or authorises the doing, of any act that the owner of copyright has the exclusive right to do under the Copyright Act without the licence or permission of the copyright owner.

Unauthorised reproduction of copyright work is the most common form of infringement of copyright. It is an infringement of copyright to reproduce the entire or a substantial part of the copyright work. In assessing whether what has been copied is substantial, the courts look at the *quality* and not the *quantity* of what has been taken. So, reproduction of a small section of a work may nevertheless be an infringement of copyright if what is taken is a vital or important part of the original work.

It is important to remember that it does not matter how readily available a work is in the public domain, such as work on the internet, reproduction of that work without the permission of the copyright owner will amount to an infringement of the copyright in the work.

Staff should also be aware that use of third party applications such as Google maps and screen captures are classified as a breach of copyright when used for business purposes.

3.1.6 When Infringement is Not Applicable

The Copyright Act sets out a number of specific situations where fair use of a copyright work will not amount to copyright infringement. A "fair use" of a work for the purpose of research or study, for the purpose of criticism or review, for reporting news, or for the giving of professional advice by a legal practitioner will not amount to an infringement of copyright. In most instances, use by a Mildura Rural City Council employee will not fall within these exceptions and so the

copyright owner's consent should be sought before the entire or a substantial part of a work is copied or reproduced.

3.1.7 Moral rights

Use of most works by Mildura Rural City Council employees will generally not infringe the moral rights of an author if the use of the work is reasonable in all the circumstances. Moral rights issues are more likely to arise in situations where Mildura Rural City Council employees are dealing with artwork or artistic creations of third parties.

3.1.8 Guidelines on the use of copyright

Where Mildura Rural City Council work is to be published, employees should consider whether an appropriate copyright notice should be included.

When engaging independent contractors, consider whether Council should secure an unrestricted licence to use the copyright work for any future proposed uses of the work by Council and where appropriate, obtain an assignment of copyright in Mildura Rural City Council's favour.

Obtain the permission of the owner of copyright before copying or reproducing an entire work or a substantial part of a work.

3.2 TRADE MARKS

3.2.1 General

Under the Trade Marks Act, a trade mark is a sign (such as a name, logo, symbol, brand or marking) used to distinguish the goods or services of the trader or organisation using the sign from the goods or services of other traders.

3.2.2 Registration of a trade mark

A trader or organisation (such as Mildura Rural City Council) can apply to register a sign used by it as a trade mark.

3.2.3 Who owns a trade mark

A registered trade mark will be owned by the trader or organisation that applies to register it. Once registered the owner may assign the trade mark registration in its entirety or license others to use it. If Mildura Rural City Council licenses its trade marks to any third parties, such as where Mildura Rural City Council agrees to sponsor events or public performances, it should ensure that the licence agreement sets out the manner in which the trade mark is to be used. Improper use of a trade mark can dilute the value of the trade mark and make it vulnerable to removal from the Trade Marks Register.

A trade mark registration in Australia provides the owner of the trade mark with an exclusive legal right to use, license or sell it within Australia for the goods and services for which it is registered.

Trade mark registration differs from registration of a company, business or domain name which does not in itself give you the right to use that name as a trade mark.

3.2.4 Use of trade marks

Ideally, the "®" symbol should always be used in conjunction with a registered trade mark and the "™" symbol with unregistered marks. These symbols indicate to others that Mildura Rural City Council is using the word, sign or name as a trade mark and claiming a proprietary right in that word, sign or name.

3.2.5 Infringement of a trade mark

A registered trade mark is infringed if a person uses as a trade mark a sign that is substantially identical with or deceptively similar to the registered trade mark in relation to the same or closely related goods and services.

Mildura Rural City Council employees should be careful not to use trade marks owned by other traders or businesses without authorisation. If Mildura Rural City Council wishes to use a new name, brand or logo, a thorough search of the Australian Trade Marks Register should be conducted to ensure that no other third party already has a registration for that name, brand or logo.

3.2.6 Guidelines on the use of trade marks

Consideration needs to be made on whether any new Mildura Rural City Council signs, logos or markings should be registered as trade marks. Once trade marks are registered the "®" symbol is used, but until registration occurs the "™" symbol is used in conjunction with the mark.

3.3 DOMAIN NAMES

3.3.1 A domain name identifies the domain name holders' Internet address.

3.3.2 Registration of a domain name

To be eligible to register a .com.au domain name, Mildura Rural City Council must be able to show that it has a current company or business name or a trade mark registration or application. The domain name may either be based on those names or can be a generic word describing Mildura Rural City Council's services. There are application fees for registering a domain name and ongoing renewal fees.

3.3.3 Protection for a new name or brand

Unlike a trade mark, a domain name does not of itself give the holder of the domain name any rights to the name. So, if Mildura Rural City Council wishes to obtain protection for a new brand or name that it is using as a domain name, it should seek to register that brand or name as a trade mark.

3.4 PATENTS

3.4.1 General

Under the Patents Act, a patent gives the owner the exclusive right to prevent others from manufacturing, using and/or selling the invention in Australia. The owner may also license others to manufacture the invention.

3.4.2 Obtaining a patent

To obtain a patent, an application must be filed with the Patent Office. The Patent Office will assess whether the invention covered by the patent is new and meets the requirements. Patents cover, generally, any device, substance, method or process which is new, inventive and useful. Artistic creations, mathematic models, plans or other purely mental processes cannot be patented.

3.4.3 Discussions on an invention

It is very important not to publicly disclose anything about an invention before filing a patent application. If the invention is demonstrated or discussed in public, or offered for sale or sold in public before the patent application is filed, this may prevent a patent being granted for the invention.

3.4.4 Benefits of a patent to Council

As the patent owner has the exclusive right to "exploit" the invention under a patent, Mildura Rural City Council would be able to generate revenue by licensing others to use any inventions for which it obtained a patent by way of licensing fees and/or royalty payments. It would also have a monopoly in the invention and could prevent others from using it.

3.4.5 Infringement of a Patent

Essentially, a patent is infringed where a person exploits the patent (which includes dealing with another invention covered by the patent) without the permission of the owner of the patent.

3.4.6 Guidelines of the use of Patents

Consideration needs to be made on whether any new device, method or process could be the subject of a patent application. Use of any patents of third parties without obtaining their permission is prohibited.

4. Who is responsible for implementing the policy

Manager Corporate Administration

5. Definitions

Intellectual property rights	Intellectual property rights are those rights provided by a suite of different laws to protect the products of intellectual endeavour. These laws include laws relating to copyright, trade marks, domain names and patents.
Copyright	Copyright is the protection given to the original <i>expression</i> of an idea, concept, fact or information. It does not protect the underlying idea, concept, fact or information itself.
Moral Rights	Moral rights are personal rights belonging to the author of a work in which copyright subsists. Only individuals have moral rights, not corporations or organisations. They essentially include the right to be appropriately identified as the author of a work and the right not to have the work subjected to derogatory treatment.
Trade Mark	A trade mark is a sign (such as a name, logo, symbol, brand or marking) used to distinguish the goods or services of the trader or organisation using the sign from the goods or services of other traders.
Domain Name	A domain name identifies the domain name holders' Internet address.
Patent	A patent provides protection for the owner's invention.

6. Legislation and other references

6.1 Legislation

- Copyright Act 1968 ;
- Trade Marks Act 1995 ; and
- Patents Act 1990.

6.2 Documents

Nil

6.3 Risk Assessment Reference

Risk Category	✓	Risk Category	✓
Asset Management Committees		Financial Sustainability Human Resource Management	
Compliance – Legal & Regulatory Contract Management Contract Tendering & Procurement Corporate Governance Environmental Sustainability	✓	Leadership & Organisational Culture Occupational Health & Safety Organisational Risk Management Project Management Public Image and Reputation	