


## Assessment 3 Dealing with Non-Compliance

Qualification details			
Qualification National Code & Title	ICT40120 - Certificate IV in Information Technology – Programming (Release 1)	State code	AC07
	ICT40120 - Certificate IV in Information Technology – Networking (Release 1)		AC10
	ICT40120 - Certificate IV in Information Technology – General (Release 1)		BFF9

Assessment Title (as per DAP)	<b>Assessment 3 Dealing with Non-Compliance</b>		
Unit National Code & Title	ICTICT451 Comply with IP, ethics and privacy policies in ICT environments	State code	OBU08
Date Due	Week 18	Date Received	Week 10
Student Name & ID	Richard Pountney 30007736		
Student Declaration	I declare that the evidence submitted is my own work:  .....		

<b>Assessor Name</b>			
<b>Assessment Decision</b>	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Not Yet Satisfactory	
<b>Is student eligible for reassessment (Re-sit)?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<b>Reassessment Date</b>
<b>Assessor Signature</b>			<b>Date</b>
<b>Feedback to student</b>			
Via Blackboard (LMS) – Please check [Grade] section.			
<b>Feedback from student</b>			
Via Blackboard (LMS) – Please use [Comment] section during submission.			
<b>Student signature</b>			<b>Date</b>

Assessor Instructions	
Type of Assessment	In Class, face to face
Duration of Assessment	3 weeks

## Assessment 3 Dealing with Non-Compliance

<b>Location of Assessment</b>	Blackboard
<b>Conditions</b>	Gather and observe evidence from the students as they perform the tasks. Students must complete all requirements of the assessment. Use the marking guide to confirm that students have completed the tasks correctly.
<b>Marking Checklist</b>	See Assessment 3 -MarkingGuide.docx
<b>Due Date</b>	Week 5
<b>Student Instructions</b>	
<b>Purpose of Assessment</b>	<p>The candidate must demonstrate the ability to complete the tasks outlined in the elements, performance criteria and foundation skills of this unit, including evidence of the ability to:</p> <ul style="list-style-type: none"> <li>Evaluate and implement at least three different types of intellectual property (IP) within an organisation</li> <li>Assist, on at least two occasions, with the development and implementation of organisational IP, ethics and privacy policy and procedures.</li> <li>In the course of the above, the candidate must: <ul style="list-style-type: none"> <li>Assist with maintenance of organisational IP, ethics and privacy policy procedures</li> <li>Review potential risks and non-compliance incidents</li> <li>Contribute to the development of non-compliance incident recommendations.</li> </ul> </li> </ul> <p>The candidate must also be able to demonstrate knowledge to complete the tasks outlined in the elements, performance criteria and foundation skills of this unit, including knowledge of:</p> <ul style="list-style-type: none"> <li>key legislation required to evaluate and implement IP in the ICT industry</li> <li>key policies, procedures and documentation in the ICT industry, including those related to: <ul style="list-style-type: none"> <li>organisational IP policies and procedures</li> <li>codes of ethics pertinent to the ICT industry</li> <li>privacy</li> <li>key organisational communication processes and procedures related to identifying IP, ethics and privacy policies in ICT environments.</li> </ul> </li> </ul>
<b>Duration of Assessment</b>	3 weeks
<b>Location of Assessment</b>	Blackboard
<b>Reasonable adjustment</b>	In some circumstances, adjustments to assessments may be made for you. If you require support for literacy and numeracy issues; support for hearing, sight or mobility issues; change to assessment times/venues; use of special or adaptive technology; considerations relating to age, gender and cultural beliefs; format of assessment materials; or presence of a scribe you need to inform your lecturer.
<b>Required Resources</b>	Students will need a USB drive to save their work on.
<b>Assessment Submission</b>	All questions and activities must be attempted.

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	<p>Use of research tools and peers in formulating answers is acceptable – but work submitted must be your own work.</p> <p>Final project documentation is to be uploaded to the appropriate area in the Blackboard course created for this unit.</p> <p>If you are marked as NYS (Not Yet Satisfactory) on your first attempt, you will be provided with another opportunity to re-attempt the assessment.</p>
<b>Skills being assessed</b>	<ul style="list-style-type: none"> <li>• Ability to use workplace health and safety practices for an office.</li> <li>• Ability to identify and fulfil requirements of a brief or set of tasks.</li> <li>• Ability to use appropriate software for completion of the assessment.</li> <li>• Ability to review, evaluate, correct and upload work to blackboard.</li> </ul>

### Assessment Contents

**Answer the following questions and their parts (lettered), in full referring to the situations described. Give reasons, explanations, examples and note any references used. The completed assessment must be submitted to blackboard.**

#### CONTEXT:

This assessment investigates the skills and knowledge required to comply with the protection and lawful use of intellectual property (IP) and to implement relevant organisational ethics and privacy policies. The workplace can be a very competitive environment and colleagues can take credit for work that is not theirs in order to gain favour with a view to promotion.

#### QUESTION 1 - TAKING CREDIT

The following scenario takes place in a small engineering company.

*Ian Jones in marketing, accidentally receives a set of emails from an external client intended for his colleague, Patricia Roberts. In the E-mails a sales idea is outlined that will make the company a great deal of money. Ian goes to his CEO, Paul, who he plays golf with and outlines the idea. Paul implements the idea and credits Ian giving him a pay rise and promotion. Ian, in his new position as head of sales, promotes Patricia but does not tell her about the e-mails she missed or why he is promoting her.*

- What are the moral and ethical points raised in this scenario?
- How realistic is such a situation or similar in the business world?
- What should Ian have done?

A few months later, Patricia finds out about the misdirected e-mails and confronts Ian who does not know what to do and outlines the situation to Paul whilst playing golf.

- What are some of the possible outcomes of these developments?
- What outcome is morally most desirable?

Paul sacks Patricia, on the grounds that she is a troublemaker.

- What recourse is available to Patricia?
- With hindsight, what would you have done if you were Ian?
- With hindsight, what would you have done if you were Paul?
- With hindsight, what would you have done if you were Patricia?

## QUESTION 2 – NOT WHAT IT SAYS OR WAS SPECIFIED

### CONTEXT:

This assessment investigates the skills and knowledge required to comply with the protection and lawful use of intellectual property (IP) and to implement relevant organisational ethics and privacy policies. This case scenario highlights the use of different materials from those specified to a client.

**Scenario:** *You work for a solar installation company. You notice that the solar panels being installed are not the same as the rating on the purchase order. You ask your foreman if they are the correct panels and he says that our job is to just install what we are given.*

- a) What are the moral implications of this situation?

You do some google research on the panels and realize that they are far superior to what the customer is actually paying for.

- b) How does this change, if at all, the moral implications of the situation?  
c) If the panels were found to be inferior to those purchased would you think the morality of the situation to be different?

You tell your foreman of your findings and he immediately checks on Google and informs his boss of the situation. The boss credits him with a bonus which he splits 50:50 with you. The future panels are as specified.

- d) Is this situation morally ok with you? Give reasons for your answer.

## QUESTION 3 – PONZI AND PYRAMID SCHEMES

### CONTEXT:

This assessment investigates the skills and knowledge required to comply with the protection and lawful use of intellectual property (IP) and to implement relevant organisational ethics and privacy policies. Moral infringement can sometimes be punished by large fines and very long prison sentences.

This is a true case:

*Bernie Madoff is a former American stockbroker who orchestrated the biggest Ponzi scheme in history, and also one of the largest accounting scandals. Madoff ran Bernard L. Madoff Investment Securities LLC. After the 2008 financial crisis, it was discovered that Madoff had tricked investors out of over \$64.8 billion. Madoff, his accountant, David Frierling, and second in command, Frank DiPascalli, were all convicted of the charges filed against them. The former stockbroker received a prison sentence of 150 years and was also ordered to pay \$170 billion in restitution.*

- a) What is a Ponzi scheme, give an example?  
<https://moneysmart.gov.au/investment-warnings/ponzi-schemes>
- b) How did Madoff trick the investors?

[https://en.wikipedia.org/wiki/Madoff\\_investment\\_scandal](https://en.wikipedia.org/wiki/Madoff_investment_scandal)

- c) What is a pyramid sales scheme, give an example?  
[https://en.wikipedia.org/wiki/Pyramid\\_scheme#:~:text=In%202003%2C%20the%20United%20States,internet%20mail%2C%20and%20that%20the](https://en.wikipedia.org/wiki/Pyramid_scheme#:~:text=In%202003%2C%20the%20United%20States,internet%20mail%2C%20and%20that%20the)
- d) Why are Ponzi and Pyramid sales schemes illegal?
- e) Is there an argument that people who are fooled by these schemes through their own greed deserve to lose their money? Give reasons for your opinion.

#### QUESTION 4 - DEFENCE OF PARODY - “It was just a joke”

##### CONTEXT:

This assessment investigates the skills and knowledge required to comply with the protection and lawful use of intellectual property (IP) and to implement relevant organisational ethics and privacy policies. Is “it was just a joke” ever a defence against infringement?

**CASE 1 - In 2007, the high-end signature hand-bag and luggage maker, Louis Vuitton Malletier, lost an outrageous copyright infringement case against comedy fashion company Haute Diggity Dog.**

The comedy designers had released a line of parody products named Chewy Vuitton, to go along with other memorable knock-offs such as Chewnel No.5 and Sniffany & Co.

Remarkably, the U.S Court of Appeals ruled against the claim of copyright breach, stating that because of the element of parody, the products were adequately differentiated and unique, thereby negating any copyright or trademark infringement.

- a) What is your opinion on the above case? Give reasons for your ideas.
- b) Without the original famous product the parody does not work, so do you think Haute Diggity Dog should have paid Louis Vuitton for use of their brand name in their parody?

**CASE 2 - S. Victor Whitmill v. Warner Bros. Entertainment Inc.**

In the recent movie *The Hangover Part II*, Stu Price, a strait-laced dentist, wakes up after a night of debauchery in Bangkok to find a tribal tattoo wrapped around his left eye. The tattoo is identical to the one Mike Tyson has, and it alludes to the boxer’s cameo in the original 2009 movie *The Hangover*. Tyson’s tattoo artist S. Victor Whitmill filed a lawsuit against Warner Bros. Entertainment on April 28, just weeks before the movie’s May 26 opening. He had obtained a copyright for the eight-year-old “artwork on 3-D” on April 19. He claimed that the use of his design in the movie and in advertisements without his consent was copyright infringement. Warner Bros., saw it as a parody falling under “fair use.”

On May 24, 2011 Chief Judge Catherine D. Perry of the United States District Court for the Eastern District of Missouri denied an injunction on the movie’s release but said Whitmill still had a case. If it meant avoiding a long trial, Warner Bros. said, in early June, that it would be willing to “digitally alter the film to substitute a different tattoo on Ed Helms’s face” when the movie is released on home video. But that ending was avoided on June 17, when Warner Bros. and Whitmill hashed out an agreement of undisclosed terms.

- c) Do you think the tattoo design was fair use as a parody?

- d) What should Warner Bros. have done about using the very recognizable Tyson tattoo?
- e) Digitally altering a film would cost a lot of money. How much do you think is fair payment for use of the tattoo?

#### **CASE 3 - Campbell v. Acuff-Rose Music, Inc.**

"Weird Al" Yankovic has a policy of writing a parody of a song only if he gets permission from the artist. In the late 1980s, the rap group 2 Live Crew attempted to play by the same rules. Luther Campbell, one of the group members, changed the refrain of Roy Orbison's hit "Oh, Pretty Woman" from "pretty woman" to "big hairy woman," "baldheaded woman" and "two-timin' woman." 2 Live Crew's manager sent the bawdy lyrics and a recording of the song to Acuff-Rose Music Inc., which owned the rights to Orbison's music, and noted that the group would credit the original song and pay a fee for the ability to riff off of it. Acuff-Rose objected, but 2 Live Crew included the parody, titled "Pretty Woman," on its 1989 album "As Clean as They Wanna Be" anyway.

Acuff-Rose Music Inc. cried copyright infringement. The case went to the Supreme Court, which, in so many words, said, lighten up. "Parody, or in any event its comment, necessarily springs from recognizable allusion to its object through distorted imitation," wrote Justice David Souter. "Its art lies in the tension between a known original and its parodic twin."

- f) Why do you think the music industry has so much IP theft and infringement?
- g) Is sampling by DJs and artists IP infringement?... What is the legal situation regarding sampling?

#### **QUESTION 5 – PLAGIARISM – Blatant copying**

##### **CASE 4 - Men At Work have been ordered to pay 5 per cent of royalties for plagiarizing part of their 1980s hit Down Under.**

In February the Federal Court ruled the iconic Aussie band plagiarized part of the song, which was penned in 1979 but only achieved worldwide success after a flute riff was introduced to the track two years later.

Larrikin Music said the band stole the riff from the children's song Kookaburra Sits in The Old Gum Tree. Kookaburra Sits In The Old Gum Tree was written by Melbourne teacher Marion Sinclair for a Girl Guides jamboree in 1934 and has been sung by generations of Australian children ever since.

Larrikin owns the rights to the song and had been seeking up to 60 per cent of Down Under's profits as compensation.

The Federal Court was told that Men at Work's Business As Usual album, on which the song appears, had achieved huge commercial success both in Australia and overseas.

Today Justice Peter Jacobsen described Larrikin's compensation request as "excessive, over-reaching and unrealistic".

"Although the quotation from Kookaburra in the 1981 recording is - in my view - sufficient to constitute an infringement of copyright, other factors are to be taken into account in assessing the percentage interest payable in a hypothetical licensing bargain," he said.

Justice Jacobsen ordered Men At Work front man Colin Hay, fellow songwriter Ron Strykert and EMI to pay Larrikin 5 per cent of future profits, as well as royalties dating back to 2002.

[https://en.wikipedia.org/wiki/Down\\_Under\\_\(song\)](https://en.wikipedia.org/wiki/Down_Under_(song))

- a) What are your opinions on the fairness of the case above?

Marion Sinclair said that the song came to her from above and that she did not own it.

COLIN Hay has revealed that he believes the stress from the copyright case over Men at Work's Down Under contributed to the death of both his father Jim and bandmate Greg Ham.

<https://www.news.com.au/entertainment/music/men-at-works-colin-hay-says-down-under-lawsuit-contributed-to-death-of-his-dad-and-bandmate/news-story/db47d17797386c960b7a7737974ea1ce>

- b) Do you think that these extra facts in any way change the ethics and morality of the Colin Hay case (*Larrikin Music Publishing Pty Ltd v EMI Songs Australia Pty Limited*) ?
- c) The music industry has many examples of infringement. Find, document, and comment on another example case of plagiarism in the music industry

#### **CASE 5 – THE ABORIGINAL FLAG**

Originally a protest flag, it's now recognised as the dominant symbol of Australia's Aboriginal people and is an official flag of the country.

WAM Clothing was granted the exclusive use of the Aboriginal flag on clothing, physical and digital media by its designer and copyright holder, the Luritja artist Harold Thomas, in November 2018.

Some Aboriginal people have been ordered to stop using the flag.

"How can one person or business have a monopoly over it? The flag belongs to all Aboriginal people. Why do they have to pay for it? It's a symbol of our people's survival. Many of us don't identify with the Australian flag because for us it represents colonisation and invasion." Gunditjmara woman Laura Thompson told the BBC at the time.

WAM Clothing has since offered Ms Thompson free use of the flag, but she refused, incensed by what she saw as a non-Aboriginal company seeking to profit from Aboriginal identity.

Community anger has also escalated over reports that one of WAM Clothing's owners was previously involved in a business which sold fake Aboriginal art.

Few people know that the flag is constrained by copyright laws.

Currently, Aboriginal groups must pay a non-Aboriginal-run business to reproduce the flag on cloth, clothing and merchandise.

The situation has angered many people. Indigenous MP Linda Burney - who has the flag tattooed on her arm - has declared the symbol is being "held hostage".

Amid increasing pressure, Australia's government is now reported to be considering taking over the copyright, but it faces complex legal and cultural issues.

<https://www.bbc.com/news/world-australia-49315063>

<https://www.worldtrademarkreview.com/brand-management/tale-two-flags>

- d) What are the moral and ethical issues involved in this case?

Use google with appropriate keyword search to find out the answers to the following questions.

- e) Can you legally fly a pirate flag?
- f) Can you legally make a shopping bag out of the American flag?
- g) What else can you find out about this case and any similar flag copyright case?



### QUESTION 6 – NON-DISCLOSURE AGREEMENT (NDA)

- a) What is an NDA? discuss a real example.
- b) What are the ethical considerations in a Non-Disclosure Agreement (NDA) and IP Contract?
- c) Review, analyse and comment on South Metropolitan TAFE's Copyright Policy and non-disclosure agreements.
- d) Examine occurrence and consequences of ethical infringement cases involving an NDA. Give two example cases.

*You must include references to all information, video and picture sources. If your work is not referenced it will be considered as PLAGIARISM.*