

FIT1049: IT professional practice

Week 8: Professional ethics and legal frameworks for IT professionals



Things to cover today...

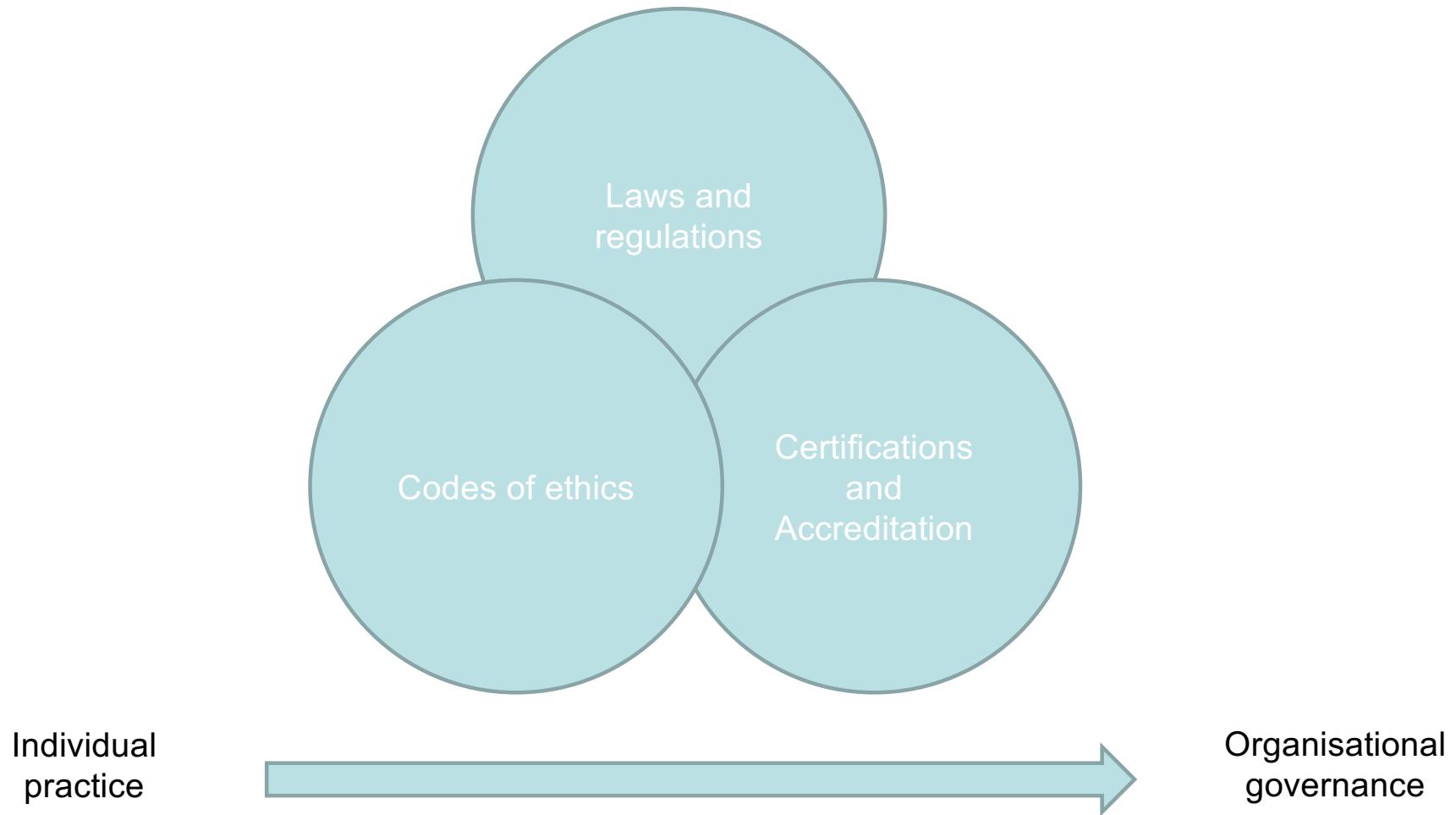
At the end of this lecture, you will broadly understand:

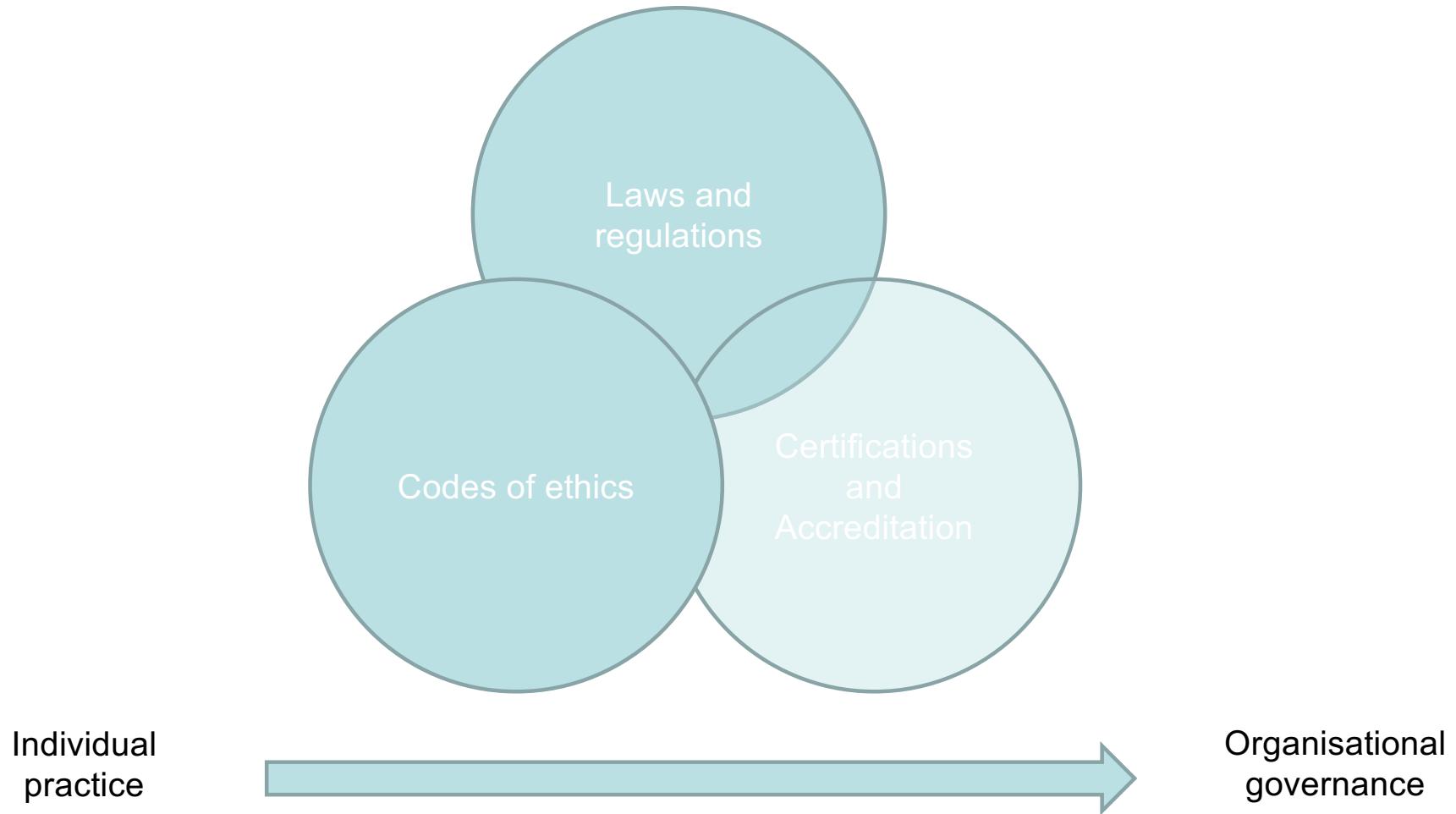
1. Things you need to know as part of working in an organisation (e.g. contractual obligations, entitlements and enterprise bargaining; Workplace relations, workplace behaviours and OHS; Organisational governance and information management),
2. Things you need to know as part of working in IT (e.g. Intellectual property (IP) and copyright; Privacy and confidentiality; Data use and management), and
3. Things you need to know when you cannot resolve the issues locally within the organisations (e.g. Whistleblowing and other extraordinary measures).

Things to cover today...

At the end of this lecture, you will broadly understand:

1. Things you need to know as part of working in an organisation (e.g. **contractual obligations**, entitlements and enterprise bargaining; workplace relations, workplace behaviours and OHS; organisational governance and information management),
2. Things you need to know as part of working in IT (e.g. **intellectual property (IP) and copyright; privacy and confidentiality; data use and management**), and
3. Things you need to know when you cannot resolve the issues locally within the organisations (e.g. **whistleblowing** and other extraordinary measures).





FIT1049: IT professional practice

Week 8 (alt.): Rules that govern your individual practice

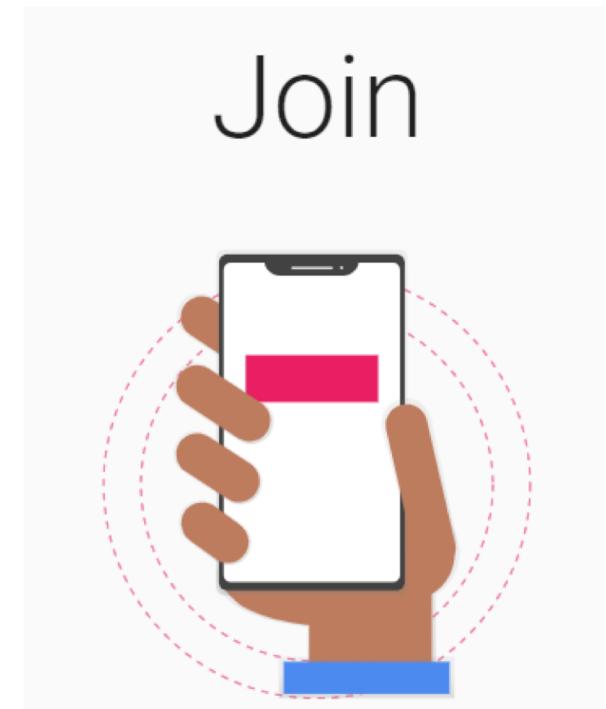


Get ready with FLUX...

Please head to <https://flux.qa> and sign in with your Monash account (you should then stay logged in for the semester).

Hit the plus button in the top right and type in code **8JQJ4J** to join the FIT1049 group. The code is case sensitive.

*Please note that this is a Monash system, and your responses to questions are not anonymous.



Join

Question 1: Contractual obligations – Non-compete clause

So you were offered a job as a full-time programmer in one of the leading game development companies in Australia. The company is extremely well known, and this is the place you always dreamt of working at. This morning you received an offer letter with a contract by email, and you were supposed to get back to the company with a signed contract. As you review the contract, most of the things were something you already expected, such as the span of working hours and leave entitlements and so on, but one thing stood out: that you will not be able to work in the same industry for five years if you ever leave the company. Is this really something they can include in the contract?

1. No – it is something they just made up, and they cannot tell you where you can and cannot work once you left the job.
2. Yes – it is a legitimate condition that the company can potentially include in the contract, and you have to accept it in order to get the job.
3. Yes – it is a legitimate condition that the company can potentially include in the contract, but you may be able to renegotiate it.

Question 2: Contractual obligations – Conflict of interest

Stick to the same scenario. While working for the company, you were approached by another game development company to do some minor programming work for their product. You feel like it would be a good experience, and think you can manage it in the evenings when you are not at work. Is there any issue with this?

1. Of course not – as long as you are not doing it during the work hours, it should be fine.
2. Yes – there will be an issue if you are working full-time already, and this will be automatically breaching the contract if you undertake more work outside.
3. Maybe – it depends.

Question 3: Non-disclosure agreement 1

So in the end you manage to do the casual work at another game development company. Your manager at the other company (where you work full-time) was actually quite supportive about it, since they consider this as a professional development opportunity for you too. Two months in, you already learnt lots of programming skills at both the companies, and have been applying the skills at both the workplaces. One day, though, you got a letter from the other company's lawyers talking about your breach of a non-disclosure agreement and confidential information, and they point to the strong similarity between the particular sections of the game you developed at each of the companies. Would this really constitute the case of the breach of those agreements?

1. No – that's how we learn things and gain our expertise, and it is impossible to police how we use what we learn in everyday practice.
2. Yes – you may have potentially breached the agreements by disclosing some of the knowledge you were not supposed to share with other companies.
3. No – you were simply doing your job with your best intention, and the similarity is simply due to the fact they were done by the same person (i.e. you)

Question 4: Non-disclosure agreement 2

In the same scenario, what's the potential consequence?

1. A block on your other company selling the game in which the similarity was found;
2. Recall and/or destruction of all copies of the product;
3. Compensation for all the damages caused for the company, and return of any profits made by the sales of the game; or
4. All of the above.

What happened in reality?

This is based on the real case of *IPC Global Pty Ltd v Pavetest Pty Ltd [2017]*. The 2nd company were prevented from selling software and copies were destroyed. The 2nd company had to pay damages or give back profits made from sale of software. Be aware of any agreement you sign. Even if you think you have no room to negotiate, try and get a copy of the employment contract in writing so you can refer to it in future if any issues come up.

**Please note that the scenarios used in this lecture has been modified for the teaching purposes, and is not an accurate reconstruction of the real case.*

Question 5: Intellectual property

In one of the team meetings, your colleague came up with the idea of developing a game based on *Sabacc*, a fictitious game played by Han Solo in a Star Wars film. It is only a fictitious game mentioned very briefly in the actual film, so there is no record of any rules or how it is played, so the idea is to make up rules yourselves, and turn this into a mobile game and sell it to Star Wars fans (or else) on the Apple App store. Would this be a problem?

1. Yes – even if it is fictitious, the idea of the game might be protected by a patent from the film's production company.
2. No – the game does not really exist (as yet), and it is only an idea, so it is of anyone to use freely.
3. Yes – any creation by someone else would be copyrighted by the person who came up with it.

Question 6: Copyright and ‘Fair Use’

So your team has gone ahead, and developed the game which is selling pretty well. Your team is increasingly keen to exploit this opportunity, and wondered if they could suggest to the management to use GIF images with images from the film, such as *Empire Strikes Back* and *Return of the Jedi*. The idea is to promote the game by tweeting the GIF images with captions, such as “From a Cantina, far far away to your mobile device” and “Go bust? Don’t worry, we won’t take your ship!” Would you think this’d cause any IP issue?

1. No. GIFs will use such a small amount of the images from the film, and those tweets use such a limited amount of words from the film it is bound to be ‘fair use’.
2. No. As long as you don’t include those images and dialogue in the game itself, this would acceptable.
3. Yes. Even using a small amount of images or dialogue from the film could be infringement.

Question 7: Trademarks

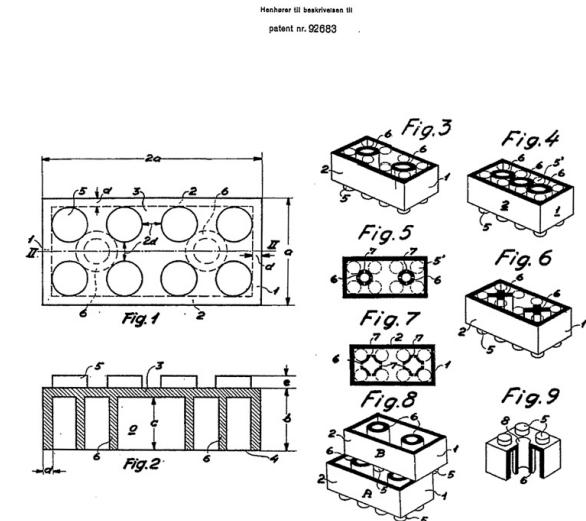
Meanwhile, some of your colleagues are concerned that someone else will try and make another Sabacc game, since there are numerous rip-offs and clones online. They are thus thinking of proposing to the management to register Sabacc as a trademark to make it clear they own the game. They already searched the US trademarks register and can't find anything there, so they think this will be the best way to protect the game. Are there any problems with registering the trademark Sabacc and naming their company after the game?

1. No – Lucasfilm have not registered the trademark so it is fair to assume that whoever applies for it first would have the right to claim it as their own.
2. Yes – Lucasfilm could still have trademark protection in Sabaac.
3. Maybe – You should ask Lucasfilm first for permission.

Intellectual property – refers to creations of the mind for which owners are granted various exclusive legal rights
(Raysman, Pisacreta & Adler, 2008)

Copyright – protects the expression of the ideas, which must be in material form that is recorded in some way e.g. written, filmed, coded etc. Its protection is free and automatic, though conditions vary in different jurisdictions (e.g. countries) and license types (e.g. Creative Commons, Open-Source).

Fair use – allows use of copyright material for particular purposes, but the conditions vary from a country to another. (e.g. in Australia, this is limited to: Research and study; Criticism and review; Parody and satire; Reporting news; and Giving professional advice).



(Source: Block62.com, 2012)

Patent – is “a right that is granted for any device, substance, method or process that is new, inventive and useful”, and is “a legally enforceable right to commercially exploit the invention for the life of the patent” ([IP Australia, 2019](#)).

Trademarks (or brand) – are exclusive rights given to sell the ‘mark’, which includes not only a ‘logo’ but also “a letter, number, word, phrase, sound, smell, shape, logo, picture, movement, aspect of packaging, or a combination of these” ([IP Australia, 2019](#)).

Question 8: Intellectual property

You bring up all these possible issues with the colleagues, but they don't seem too concerned. They tell you that the app will be available on the Apple app store, and if there was any problem with it, Apple would reject it as they are very careful about what they allow there. Is this really true?

1. Yes – Apple have very careful processes to determine what should be on their app store, so any of these issues will be identified as part of these processes.
2. Yes – although it is not Apple's responsibility to check all games for IP or other legal issues, they will one way or another identify these issues and will let you know.
3. No – it is not true at all.

What happened in reality?

The company using the name Sabaac lost the copyright case over using images and dialogue from the films. In a summary judgement, the court found that this was not a fair use as it was not transformative and was for a commercial purpose. They also lost their attempt to dismiss the trademark case that Lucasfilm had brought against them. Lucasfilm argued that the game was cashing in on the goodwill of the Sabacc trademark and the Star wars franchise. Lucasfilm were able to show that the Sabacc trademark, although not registered, was used in commerce prior to the date of the companies first use and that this use was continuous. The court found that there was trademark protection in Sabaac as a mark for Lucasfilm overall and the Star Wars products. (See [Lucasfilm Ltd. LLC et al. v. Ren Ventures Ltd. et al.](#))

**Please note that the scenarios used in this lecture has been modified for the teaching purposes, and is not an accurate reconstruction of the real case.*

Question 9: Data use and privacy 1

Jun is a data analyst working in the IT department of a company that sells vitamin supplement products that are known to be effective for relief of specific diseases. One day, the Sales and Marketing department staff approached Jun to profile each of the previous clients by age, gender, ethnicity (by their last name) and types of products they purchased, so that they can ‘target’ their marketing activities in order to reverse the recent decline in the profit. As an IT staff member, however, Jun knows that her company’s policy on the use of client data states that the company only uses such data for delivery purpose, which contradicts with the ways the Sales and Marketing department proposes to use the data. If Jun were to comply with the proposal, which one of the six core values in the *ACS Code of Ethics* ([ACS, 2014](#)) would Jun be breaching as a result?

- 1) The Primacy of the Public Interest; 2) The Enhancement of Quality of Life; 3) Honesty; 4) Competence; 5) Professional Development; or 6) Professionalism

Question 10: Data use and privacy 2

So you now know that Jun shouldn't be doing what the Sales and Marketing team proposed. Jun indeed responded to the Sales and Marketing staff that she won't be able to do what they suggested, and as a result, Jun had received an email from the department's manager that he will be formally writing to Jun's manager a complaint that her refusal would compromise the department's and hence the company's performance. What should she be doing then?

1. Write back to the Sales and Marketing manager to find a workable compromise;
2. Report to Jun's own manager in IT and explain the situation; or
3. Report to the police or relevant authority as a case of whistleblowing.

Question 11: Data use and privacy 3

So Jun spoke to her line manager, who then told her that the company will ‘update’ its terms and conditions to more generally allow the company to use all their clients’ data to “provide services” to the clients and to 3rd party companies that the company has agreements with.

The manager also reassured Jun not to worry because the data will be de-identified; the Sales and Marketing team will not get the information about who is being targeted, but they will only know that advertising is being targeted to a certain number of people overall. The manager also explains that this way you will not necessarily need to handle personal or sensitive information yourself; making everyone immune to any of the ethical or legal risks.

Are you convinced?

What happened in reality?

In 2017 Facebook Australia were [revealed](#) through leaked documents to be targeting users as young as 14 for advertising when they were depressed. This data was not available to the public, but the leaked documents showed that Facebook could predict moods and behaviour based on posted content. Although Facebook initially apologized, they later said the data was “intended to help marketers understand how people express themselves” and did not rule out using the research or commissioning research of the same type.

This is consistent with Facebook’s apparent lack of concern over manipulating users emotional states. Facebook allowed researchers in 2012 to alter the newsfeed of 70 000 randomly selected users to more negative stories to see if it made them depressed. (Unsurprisingly it did!)

**Please note that the scenarios used in this lecture has been modified for the teaching purposes, and is not an accurate reconstruction of the real case.*

Question 12: When every attempt failed...

Danielle is a developer working for a medium sized software engineering company. Together with her manager and two other developers, Danielle has been assigned for a project to develop an interface for the existing patient data management system used in a public hospital in regional Victoria (Australia). In the course of the project, Danielle found that the system has a series of critical errors in the way it stores the patient data, exposing the patient data potentially to those who should not have access at all. These issues however do not have any direct link to Danielle's project, and the project is going so well that it will conclude next week.

When Danielle advised this to Danielle's own management, they were not keen on doing anything, fearing that the client organisation may lose their faith on Danielle's company, and also considering that Danielle's company is not liable for this issue. Danielle also raised this to the hospital management, but they just responded that this issue has nothing to do with the project Danielle and her team was conducting.

Question 12 (cont'd): When every attempt failed...

What can Danielle do? Assume that she had exhausted all the internal processes available in her own company.

1. Don't do anything further. She had tried everything she could, but once the project is over, she would have nothing to do with this hospital.
2. Don't do anything further. She should after all respect the value of *Competence* and *Professionalism* that demands her diligence to her stakeholders, including both her employer and the clients.
3. Seek an option of anonymous whistleblowing using an independent authority and/or an independent whistleblowing platform, observing the *Primacy of Public Interest*.
4. Contact local media and/or politicians to report the issue, in light of the *Enhancement of Quality of Life* and *Honesty*.


ASIC
 Australian Securities & Investments Commission

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Whistleblowing

[Home](#) > [About ASIC](#) > [ASIC investigations and enforcement](#)
 > [Whistleblowing](#) > [Guidance for whistleblowers](#)

[Guidance for whistleblowers](#)

Guidance for whistleblowers



This information sheet (INFO 52) explains:

- [who is a whistleblower](#)
- [what you should do if you believe you are a whistleblower](#)
- [the protections available to whistleblowers under the law](#)
- [ASIC's role and the limitations of our role in relation to whistleblowers](#)
- [how ASIC deals with information from whistleblowers](#), including [when we will act on your information](#)
- [our communication with whistleblowers](#)
- [the role of ASIC's Office of the Whistleblower.](#)

Start searching

SEARCH

(ASIC, 2018)

Information about whistleblowers

[ASIC and whistleblowers](#)



Warren Day, Senior Executive Leader,
Assessment and Intelligence talks about ASIC's
role in relation to whistleblowers.

[Read the transcript](#)

[The Corporations Act and whistleblowers](#)



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anti-corruption commission

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Reporting corruption

Anyone can make a complaint to us or provide information about public sector corruption and police misconduct in Victoria.

Find out how to make a complaint or provide information.

Do you have to notify IBAC? Victoria Police, Protected Disclosure Coordinators and heads of public sector bodies must notify IBAC of suspected corruption.

Why report corruption?

Corrupt activity left unchecked can:

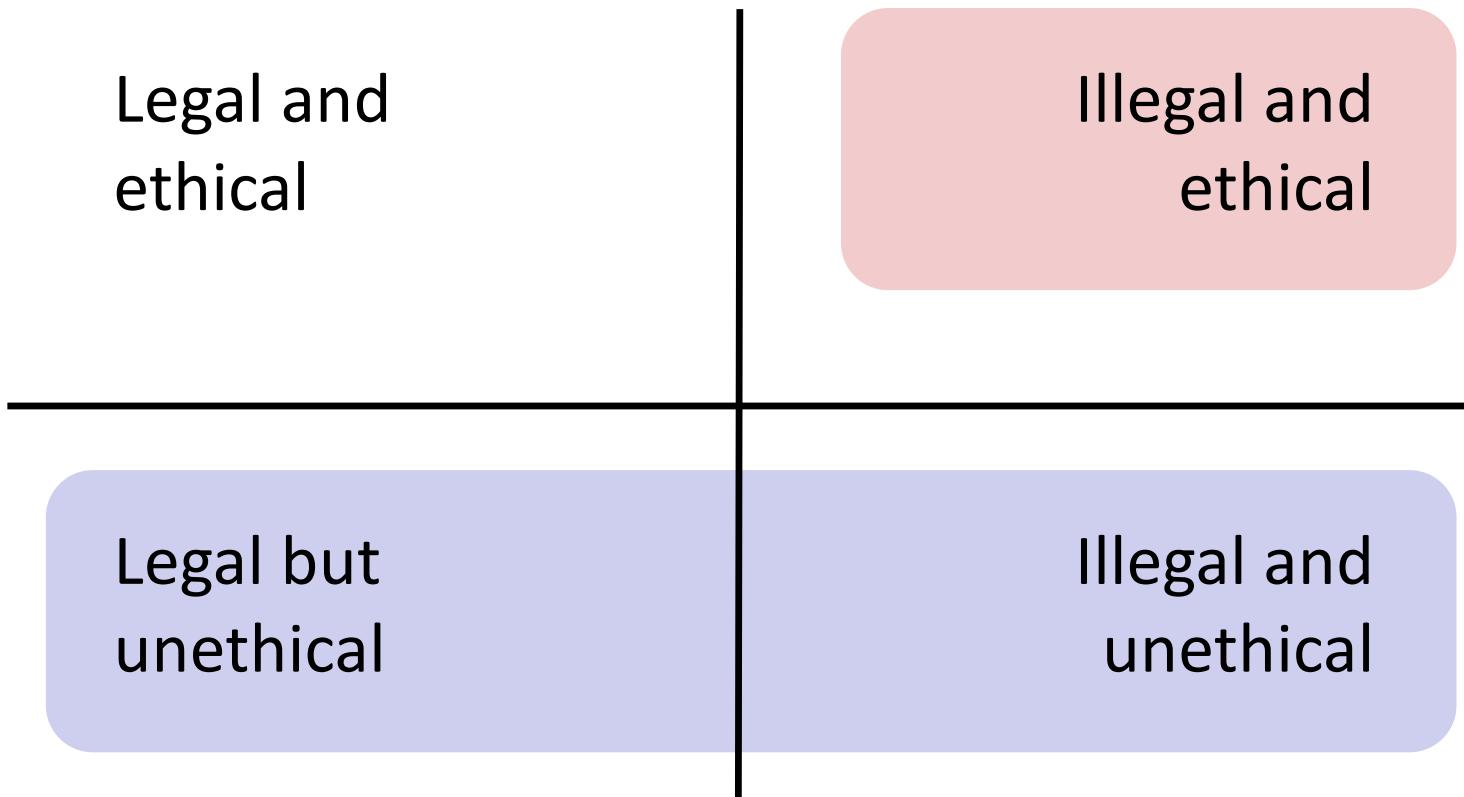
- lead to funding being diverted away from public services that support you and your family
- waste public money and resources
- undermine people's trust and respect in government
- support ongoing criminal activity
- damage reputations of individuals, colleagues, organisations and the whole public sector.

(IBAC, 2018)

What legal protections do disclosers receive?

If your complaint is assessed as a protected disclosure:

- we will never publicise your name
- you and your family, friends and colleagues will be protected from being fired or bullied for making a complaint
- you will receive protection from defamation and detrimental action in reprisal for making a protected disclosure
- you will receive immunity from:
 - civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure
 - committing an offence under the *Constitution Act 1975* (Vic) or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information
 - breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information.





Julian Assange: What next for the Australian-born hacker, who may soon face eviction from Ecuadorian embassy

The Signal | By Stephen Smiley and Penny Timms

Updated 6 Aug 2018, 1:51pm



PHOTO: WikiLeaks founder Julian Assange's days in the Ecuadorian embassy in London are numbered. (Reuters: Peter Nicholls)

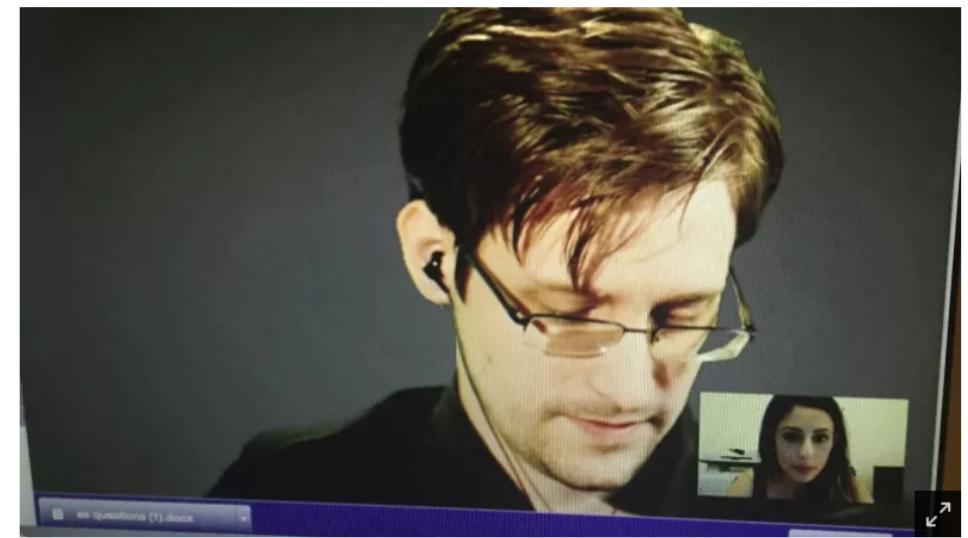
(ABC, 2018)

The Sydney Morning Herald

EXCLUSIVE | WORLD

Edward Snowden speaks about living in exile as America's most wanted

In his first Australian interview, Edward Snowden talks for 90 minutes via video about his life in exile and how the internet that has enabled mass surveillance can also be a force for good.



Screenshot of the encrypted video interview with Edward Snowden. Think Inc co-founder Suzi Jamil (bottom right) was the intermediary putting Fairfax Media's questions to the US whistleblower who is holed up in Russia.

(SMH, 2016)

([Baynes, 2018](#))

News > World > Americas > US politics

Christopher Wylie hearing: Cambridge Analytica whistleblower to give evidence to US Congress over Facebook data breach

Former employee of data analytics firm likely to face questions over work for Trump campaign

Chris Baynes | Monday 23 April 2018 14:59 | [2 comments](#)



Cambridge Analytica whistleblower Christopher Wylie gives evidence to the House of Commons Digital, Culture, Media and Sport Committee's inquiry into fake news ([PA](#))

The Honest Merchant who acts honestly because of fear of being caught. It is relatively easy to recognize that this is a case of acting in accord with duty for selfish purposes...

Immanuel Kant

*The Honest **IT professional** who acts honestly because of fear of being caught. It is relatively easy to recognize that this is a case of acting in accord with duty for selfish purposes...*

~~Immanuel Kant~~

Things to do this week...

1. Make sure you shared your eFolio and all the submission items up to the Week 8 tutorial.
2. Read the Moodle Books to date. Week 9 reading will be available early next week, to be read before the next lecture.
3. Make sure you finalized your Assignment 2 topic before you come to the tutorial next week!



◀ Week 6 (8 Apr - 14 Apr)

Week 7 (15 Apr - 21 Apr)

Break (22 Apr - 28 Apr)▶

Teamwork and professional behaviours (cont'd)

Following the Week 6 reading material and the lecture, we will continue discussing the topic of teamwork and professional behaviours in this week's tutorial, where you will be allocated to a team with whom you will be working on Assignment 2 for the rest of the semester in this unit.

The tutorial session this week will also provide you an opportunity to familiarise yourself with the team, and we will also discuss the Assignment 2 and its requirements in detail.

Pre-class activity: Something to read

In light of the cancellation of the lecture this week (due to the Good Friday Public Holiday on Friday the 19th April), there is no reading for this week. We will however upload during the mid-semester break a Moodle Book on the topic of professional ethics and legal issues for IT professionals; please read it before attending the tutorial in Week 8.

Tutorial: Something to do

Please find below the tutorial sheet for this week, in which you will find an overview, learning outcomes as well as instructions for the activities to be conducted during the tutorial. While your tutors will go through these, it would be useful if you have a look at this document prior to attending the tutorial.

[Week 7 tutorial sheet](#)
38.4KB Word 2007 document

Lecture: Something to think about

Please note that the lecture this week has been cancelled due to the Good Friday Public Holiday on Friday the 19th April 2019.

