



Association of Certified Training Intellectual Property Rights Policy

Introduction

ACT recognises that organisations seeking certification are concerned to protect their 'Intellectual Property Rights' (IPR).

It is a clear expectation that all organisations applying for the certification will respect the intellectual property rights of other organisations.

ACT is a certification body and as such is not responsible for protecting the intellectual property rights held by client organisations. This is a matter that will ultimately be dealt with by IPR holders and their legal representatives.

ACT does however recognise its unique position in having access to, and reviewing, materials submitted by all organisations applying for certification. In this role it is concerned to take such steps as are reasonable and proportionate to ensure applicants do not obviously pass off the intellectual property of others as their own.

Steps Taken by ACT

Applicant organisations will be required to confirm that they have not breached any Intellectual property rights regarding the use of copyrighted material at the beginning of their application and at specific points during the application and certification process listed below:

1. Eligibility Phase
2. Submission of Documentary Evidence
3. Formal Panel Review of Application.
4. Signing of Contract with ACT

1. Eligibility Phase

All new applicants will be required to provide a contractual warranty that their materials do not infringe the Intellectual Property Rights of another training provider before being able to proceed in the process.

This contractual warranty is part of the eligibility form.

2. Submission of Documentary Evidence

ACT assessors will, as part of their initial assessment, undertake a review of materials submitted which are stated to be the intellectual property of the applicant. Assessors will seek to bring to the attention of Lead Assessors any materials which raise concerns. Such determinations will be based on what assessors might reasonably know, this on the basis that assessors cannot be expected to know in detail the IPR owned by each individual organisation¹.

3. Formal Panel Review of Application.

A verbal check for any IPR infringement will take place at the Certification Panel hearing where the chair will further request explicit assurance that no IPR infringement has taken place.

¹ If an organisation wishes to share such information with ACT, it will be shared with assessors.

The panel chair will explicitly highlight the consequence of possible legal action being taken by the aggrieved third party against a training organisation for copyright infringement.

4. Signing of Contract with ACT

Once certification has been achieved, newly certified organisations will be required to sign a certification contract which contains a requirement for them to warrant that they are only using materials or resources legally owned by themselves or licensed to them by others.

In the event an IPR Concern is raised by an Assessor or Panel Member

1. In the event an assessor or panel member is concerned that materials submitted contain the IPR of another organisations, the process [at the assessment or panel stage] will be halted. The concern² will be raised with the party and a request made for categorical assurances that the materials are either owned or are legitimately licensed from the owner of the IPR. Best practice would be for some form of verifiable documentary evidence to be provided.
2. Where it is suspected an organisation has breached IPR and this is not resolved satisfactorily at stage 1, ACT reserve the right to inform the organisation it is believed owns the IPR and request that it confirm or deny the right of the third party to use their materials. NB. At this stage they may in turn choose to take legal action. [see below re discretionary investigation]

In the event an IPR Concern is raised by a Certified Training Service

Where an organisation suspects a breach of intellectual property rights against them and brings it to ACTs attention, the Certification Director will decide a course of action which may include investigating claims of IPR infringement, but this will be restricted to those instances where tangible evidence of a founded claim exists. This may result in suspending an organisations application or Certified status until the matter has been resolved. The decision to undertake any investigation will be at the sole discretion of the Certification Director.

In the event an IPR Investigation is commenced by ACT

If an investigation determines that there is evidence to suggest that an IPR breach may have occurred the application will be suspended until such time as the applicant can demonstrate to the satisfaction of the ACT Certification Director that:

- a) The application does not substantially reproduce any copyright materials of another organisation or otherwise make such use of another organisation's Intellectual Property Rights as would be unlawful without permission (this may involve forwarding the materials to the suspected originator for comment).

² Concerns will be raised on the basis of a combination of factors. These include knowledge of the materials including if they are known to have been used by a particular party before, who may have submitted materials first, as well as the visual appearance of materials including obvious branding and use of verbatim text. All such determinations will be made in good faith as part of a reasonable questioning of provenance. They are made without prejudice.

OR

- b) That the applicant has the express permission of the originator organisation to use the suspected material by an agreed licence arrangement and can provide evidence to that effect. Clarification will be sought in writing from the originator organisation.

Failure to comply with a) or b) above will lead to suspension or removal of Certified status for an existing Certified Training Service or the cancellation of an application for Certification, in such circumstances a refund of fees will not be payable.

ACT's obligations

ACT will act responsibly at all times to protect the 'intellectual property' contained within an application submission and will also ensure that the Intellectual Property Rights of existing Certified Training Services are treated with equal importance.

Other than as set out above, ACT does not and will not consider the facts or alleged facts of disputes, potential disputes or alleged or actual infringement of Intellectual Property Rights ("Disputes") or the provenance or ownership of any materials or the content of any materials used by the Certified Training Service, or applicant, in and during its assessment of any application. Each application will be judged on its merits alone.

Definitions

Copyright: a property right which gives its owner the exclusive right to use a creative work or authorise its use in certain ways: e.g. by copying, disseminating or publishing the work. Copyright does not have to be registered. It is initially owned by the creator (“author”) of the work or their employer, and may be passed to others through inheritance, sale or transfer. Copyright normally lasts for the creator’s lifetime plus 70 years, although this is subject to many exceptions.

Database right: the exclusive right of the owner to extract and re-use all or a substantial part of the contents of a database, regardless of whether the database or its contents are protected by copyright. A database is a collection of works, data or materials (in any format) which are arranged in a systematic or methodical way, and are accessible by electronic or other means. Database right is owned by the maker of the database or their employer. The “maker” is the person or organisation which took the initiative in obtaining, verifying or presenting the contents of the database and assumed the risk of investing in those actions.

Intellectual property: the corpus of legal rights which includes copyright, database right, moral rights, patents, trademarks, unregistered design right, registered design right, performers’ rights and similar areas.

Licence: permission from the owner of intellectual property in a work to use that work in some way which would otherwise be reserved to the owner. The owner retains ownership of the intellectual property in the work. Licences may be exclusive or non-exclusive; an exclusive licence grants the licensee the sole right to use the work in the way specified in the licence for the duration of the licence.

Moral rights: personal rights of the author of a work which are distinct from copyright. Moral rights include the right to be identified as the author of a work; the right to object to derogatory treatment of the work; and the right not to be falsely identified as the author. These rights are limited where the initial owner of copyright in a work is the author’s employer. Unless waived, moral rights are retained by the author even if the author no longer owns copyright.

Registered design right: the appearance of the whole or part of a product resulting from the features of the lines, contours, colours, shape, texture or materials of the product or its ornamentation can be registered as a registered design. The product must be an industrial or handicraft item. Registered designs are protected for up to 25 years. Where the design was produced by an employee in the course of their employment, the employer is the proprietor of the registered design. Registered design right in commissioned designs belongs to the person or organisation who commissioned the design.

Sublicense: where the party granted a licence is allowed to grant further licences (“sublicenses”) to other parties to use the intellectual property.

Trademark: an exclusive badge of origin for goods or services which has to be registered. Registration can be renewed indefinitely and gives the owner of the trademark monopoly rights over the mark.