Whole of Victorian Government Intellectual Property Policy

Intent and Principles

August 2012

## Background

The Copyright Act 1968 (Cth) (the Act) requires the State to pay Copyright Agency and Screenrights for the use of copyright material.

The Department of Government Services (DGS) manages agreements with Copyright Agency and Screenrights on behalf of the State.

The agreements require annual payments from departments and participating agencies. Copyright Agency and Screenrights distribute these payments to copyright owners.

## IP Policy Background

The State of Victoria, including its departments and public bodies creates, acquires, funds and uses all forms of intellectual property.

The Intellectual Property Policy represents the State’s policy and management tools in relation to intellectual property and comprises three components:

* IP Policy Intent and Principles
* IP Policy Guidelines
* IP Policy operational tools

The IP Policy Intent is the policy’s overarching statement of purpose. The IP Principles reflect the IP Policy Intent. The IP Principles are to be read in connection with one another; they do not operate independently.

Intellectual property is a term used to describe the results of intellectual activity and creative effort. Intellectual property assets are intangible, and their economic value exists largely in the set of exclusive rights that an owner has in the asset.

Intellectual property may be protected through copyright, trade marks, patents, designs, circuit layouts and plant breeder’s rights.

Depending on the form of intellectual property, the rights can include:

* Reproduction
* Assignment
* Communication
* Adaptation
* Translation
* Authorised use or sale

Access to the State’s intellectual property can be enabled, controlled or determined through the exercise of these rights.

## IP Policy Intent

The State grants rights to its intellectual property, as a public asset, in a manner that maximises its impact, value, accessibility and benefit consistent with the public interest.

The State acquires or uses third party intellectual property in a transparent and efficient way, while upholding the law and managing risk appropriately.

## IP Policy Principles

### Management of State owned intellectual property

1. The State manages its intellectual property in ways that are consistent, transparent and accountable.
2. The State grants rights to its intellectual property with the fewest possible restrictions.
3. The State may exercise its intellectual property rights restrictively for reasons of privacy, public safety, security and law enforcement, public health, commercialisation and compliance with the law.
4. The State owns intellectual property created by its employees in the course of their employment.
5. The State manages the moral rights of creators as required under the Copyright Act 1968 (Cth).
6. The State responds to breaches of its intellectual property rights where appropriate in order to maintain its reputation or the value of its intellectual property.

### State commercialisation of intellectual property

1. The State is not in the business of commercialising intellectual property, and does not create intellectual property in order to generate a financial return.
2. An agency may commercialise, or apply the Cost Recovery Guidelines to, intellectual property if:
3. it has an explicit statutory function to do so; or
4. it has been explicitly authorised by the Treasurer to do so because of a clear net benefit to the Victorian community.

### Procurement of goods and services

1. When State procurement may result in intellectual property being generated, the State:
2. addresses in an agreement any rights to intellectual property (including pre-existing intellectual property) that may arise as a consequence of the procurement;
3. secures a licence to the intellectual property, only to the extent necessary to achieve the purposes of the procurement; and
4. only acquires ownership of the intellectual property if a licence is not adequate in the circumstances.

### Funding and grants towards the development of intellectual property

1. When the State provides a grant or similar funding for an identified purpose or project, the State:
2. addresses in an agreement any rights to intellectual property (including pre-existing intellectual property) that may arise as a consequence of the grant or funding;
3. does not secure a licence to the intellectual property unless there is a stated purpose for doing so, and then only to the minimum extent necessary to achieve that purpose;
4. if a licence would not be adequate in the circumstances, acquires ownership of the resulting intellectual property; and
5. ensures that ownership of the intellectual property is able to be assigned to or by the State if the intellectual property is not used by the recipient for the purpose of the grant or funding within a reasonable time.

### Use of intellectual property belonging to others

1. The State deals with third party intellectual property in a manner that:
2. avoids infringing the intellectual property rights of others and complies with the law; and
3. provides equitable remuneration to intellectual property owners (whether directly or through collecting societies) in a manner consistent with the responsible spending of public moneys.

### Identification and recording of intellectual property

1. Agencies of the State identify and record intellectual property in their possession, where that intellectual property:
2. involves statutory registration and renewal processes;
3. is critical to a deliverable or core function of the agency; or
4. requires active risk management.

## Governance framework for this policy

The IP Policy Intent and Principles apply to all agencies (that is, all departments and public bodies) of the State. They are supported by the IP Policy Guidelines and IP Policy operational tools, as managed and updated by the Minister administering the IP Policy through the Department of Treasury and Finance.

Subject to the IP Policy Intent and Principles, in relation to the State’s intellectual property, a departmental Secretary or an agency head has responsibility (which may be delegated) for applying this policy to intellectual property managed by the agency.

Negotiations concerning the State’s exercise of copyright acts in relation to third-party copyright works under s 183 of the Copyright Act 1968 (Cth) are the responsibility of the Department of Treasury and Finance.

## Contact us

To discuss these agreements or other copyright matters contact DGS’s IP Policy team at [ippolicy@dtf.vic.gov.au.](mailto:ippolicy@dtf.vic.gov.au?subject=IP%20Policy)

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