Whole of Victorian Government Intellectual Property Policy

Intent and Principles – August 2024

The Secretary

Department of Government Services

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Authorised by the Victorian Government

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## Background

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

The Whole of Victorian Government Intellectual Property Policy (IP Policy) is the State’s policy in relation to intellectual property. The IP Policy is supported by practical requirements and guidance in the Intellectual Property Guidelines for the Victorian Public Sector (IP Guidelines).

The IP Policy Intent is the policy’s overarching statement of purpose, which is reflected in the IP Policy Principles. The IP Policy 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 several forms of protection, including copyright, trademarks, patents, designs, circuit layouts and plant breeder’s rights.

Each form of intellectual property protection includes specific exclusive rights. Access to the State’s intellectual property can be enabled or controlled 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

Principle 1: The State manages its intellectual property in ways that are consistent, transparent and accountable.

Principle 2: The State grants rights to its intellectual property with the fewest possible restrictions.

Principle 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.

Principle 4: The State owns intellectual property created by its employees in the course of their employment.

Principle 5: The State manages the moral rights of creators as required under the *Copyright Act 1968* (Cth).

Principle 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

Principle 7: An agency should be responsive to opportunities to utilise intellectual property for commercial use that do not conflict with the agency’s legal powers, purpose and strategic priorities.

Principle 8: An agency may commercialise intellectual property if:

1. it has an explicit statutory function to do so; or
2. the expected benefits from the commercialisation provide a clear net benefit to the Victorian community and:
   1. the agency has consulted with the responsible Minister for this policy about the commercialisation; and
   2. the responsible Minister for this policy has not given a direction to cease commercialising the intellectual property.

### State procurement

Principle 9: When procuring goods, works or services, an agency will:

1. ensure that any rights to intellectual property (including pre-existing intellectual property) that may arise as a consequence of the procurement are adequately addressed in an agreement;
2. secure licences to the intellectual property sufficient to achieve the primary and related objectives of the procurement; and
3. only acquire ownership of the intellectual property if that would advance the primary and related objectives of the procurement.

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

Principle 10: When the State provides a grant or similar funding for an identified purpose or project, the State:

1. 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;
2. 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;
3. if a licence would not be adequate in the circumstances, acquires ownership of the resulting intellectual property; and
4. 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

Principle 11: The State deals with third party intellectual property in a manner that:

* 1. avoids infringing the intellectual property rights of others and complies with the law; and
  2. 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

Principle 12: Agencies of the State identify and record intellectual property in their possession, where that intellectual property:

* 1. involves statutory registration and renewal processes;
  2. is critical to a deliverable or core function of the agency; or
  3. requires active risk management.

## Roles and responsibilities

The IP Policy Intent and IP Policy Principles are endorsed by Cabinet. This version of the IP Policy supersedes earlier versions and replaces the *Guidelines Relating to Victorian Crown Copyright* (August 1991).

The IP Policy Intent and IP Policy Principles apply to all agencies (that is, all departments and public bodies) of the State. Agencies are supported by further guidance in the IP Guidelines.

Subject to the IP Policy Intent and IP Policy 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.

### Minister for Government Services

The Minister for Government Services is the responsible Minister for this policy. Further information about consulting with the Minister for Government Services in relation to IP Policy Principle 8 is found in the IP Guidelines.

### Department of Government Services

The Department of Government Services (DGS) administers the IP Policy and IP Guidelines. The department, through the DGS Secretary, releases updated versions of the IP Guidelines and occasional administrative updates to this IP Policy document, including information about the background, roles and responsibilities.

DGS is also responsible for negotiations with copyright collecting societies on behalf of the State in relation to special arrangements for the use of third-party copyright works under s 183A of the *Copyright Act 1968* (Cth).

**Further enquiries**

For any enquiries about the IP Policy or IP Guidelines, please contact:

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