VICTORIA State Government | Education and Training

INTELLECTUAL PROPERTY AND COPYRIGHT POLICY

CONTENTS

Introduction and Purpose **3**

Scope **3**

Intellectual Property and Copyright **3**

IP Principles **3**

1. The department makes its IP available with the fewest possible restrictions 3
2. The department owns the IP created by its employees in the course of their work 4
3. The department appropriately manages IP belonging to others 4
4. IP is managed in departmental procurement, contracts, and shared funding agreements 4
5. The department does not ordinarily commercialise its IP 5
6. departmental employees must not commercialise departmental IP 5
7. Departmental IP is identified and recorded appropriately 5

Responsibilities and Governance **5**

Approving Authority **5**

Review **5**

Accountable Officer **6**

Contacts **6**

Compliance and Reporting **6**

Appendix 1: Related Policies and Guidelines **7**

Appendix 2: Victorian Government Intellectual Property Principles **8**

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INTRODUCTION AND PURPOSE

The Department of Education (the department) creates, acquires, funds and uses a range of intellectual property (IP).

It is obliged to manage and use IP, including copyright, in accordance with the Whole of Victorian Government Intellectual Property Policy (the State's IP Policy) and the law.

The department's Intellectual Property and Copyright Policy (the Policy) sets out the framework and foundational principles that guide the department's management of IP and related decision-making and practices. It outlines the department's responsibilities when IP is created or used by the department and its employees, including those located in schools.

The Policy's overarching purpose is consistent with the State's IP Policy intent in that:

- The department grants rights to its IP as a public asset, in a manner that maximises its impact, value, accessibility and benefit consistent with the public interest; and
- The department acquires or uses third party IP in a transparent and efficient way, while upholding the law and managing risk appropriately.

The Policy communicates a number of IP principles to guide the department's and schools' management of copyright and other IP. It is designed to be read in conjunction with the related policies and guidelines listed in Appendix 1.

SCOPE

Departmental staff, contractors and volunteers, including those located in schools, must comply with this Policy. TAFEs and funded non-government service providers are not in scope.

All intellectual property created, acquired, funded, and used by the department is in scope, and its management should be considered throughout relevant business processes and practices.

DEFINING INTELLECTUAL PROPERTY AND COPYRIGHT

Intellectual property (IP) is a term used to encompass a range of legal rights that protect the creations of the mind and creative effort. Patents, trademarks and registered designs are examples of IP, as is copyright.

Copyright refers to the protection extended to the creator of an original work, which typically grants exclusive rights over the use, reproduction and distribution of that work, for a specific period of time. Once that period has ended, the work will then move into the public domain where it can be used without the need to get permission from, or pay, the original owner or the subsequent rights holder. Copyright is the form of IP most commonly created and/or used in the department and schools.

Examples of IP and copyright that corporate and school staff might encounter include:

- Research or reports undertaken or commissioned by the department
- Architectural designs for a school building
- Published works by other people or organisations that staff wish to use, adapt or copy
- Curriculum material, educational software and other teaching resources.

IP PRINCIPLES

The following principles outline how IP, including copyright, is managed in the department. These IP principles are based directly from, and must be used in conjunction with, those listed in the State's IP Policy, which are included in Appendix 2.

1. The department makes its IP available with the fewest possible restrictions

The department grants rights to its IP with the fewest possible restrictions, in a way that maximises its impact, value, accessibility and benefit to the public.

To ensure the public is able to access its full benefit and value, IP owned by the department should be shared as widely as possible. For example, on its website and in its publications, the department makes the

content and resources it has created available to the public for re-use under a Creative Commons Attribution Licence.

Rights are granted with appropriate consideration of third party IP (IP belonging to others) and in accordance with IP legislation. In some cases, restrictions may be applied for reasons of privacy, public safety, security and law enforcement, public health, commercialisation (noting Principle 5) and compliance with the law.

Where the department has a licence to use IP, it must comply with the terms of that licence, including any conditions of how that IP may be used. This Principle should be read in conjunction with Principles 3 and 4 to ensure that any sharing of IP that has been licensed to the department is consistent with the terms of that licence.

2. The department owns the IP created by its employees in the course of their work

The department owns IP created by its employees in the course of their employment.

Copyright material created under the direction or control of the department is owned by the department, on behalf of the State, unless ownership is modified by agreement.

3. The department appropriately manages IP belonging to others

The department deals with IP belonging to others (third party IP) in a manner that:

- avoids infringing the IP rights of others and complies with the law
- treats the moral rights of others with respect and correctly attributes creators as appropriate
- provides equitable remuneration to IP owners (whether directly or through collecting societies) in a manner consistent with the spending of public moneys.

Students retain exclusive rights as creators of their own IP, and permission must be obtained before using student IP.

The department holds specific copyright licences that allow its employees to use copyright material without seeking permission from the copyright holder. They cover:

- corporate staff uses of copyright materials for government purposes; and
- schools' uses of copyright materials for educational purposes.

These licences involve agreements with collecting societies to provide remuneration to copyright holders for these uses. It is the responsibility of corporate and school staff to use material within licence limits and in compliance with the law.

4. IP is managed in departmental procurement, contracts, and shared funding agreements

When procurement for goods or services may result in IP being generated, the department:

a. addresses in an agreement any rights to IP (including pre-existing IP) that may arise as a consequence of the procurement.
b. secures a licence to the IP, only to the extent necessary to achieve the purpose of the procurement.
c. only acquires ownership to the IP if a licence is not adequate in the circumstances.

When providing a grant or similar funding for an identified purpose or project, the department:

a. addresses in an agreement any rights to any IP (including pre-existing IP) that may arise as a consequence of the grant or funding.
b. does not secure a licence to the IP unless there is a stated purpose for doing so, and then only to the minimum extent necessary to achieve that purpose.
c. if a licence would not be adequate in the circumstances, acquires ownership of the resulting IP.
d. ensures that overall ownership of the IP can be assigned to or by the department if the IP is not used by the recipient for the purpose of the grant or funding within a reasonable time.

5. The department does not ordinarily commercialise its IP

In line with the Whole of Victorian Intellectual Property Policy, the department is not ordinarily in the business of commercialising IP in order to create a financial return. This principle ensures that government-generated IP benefits the public interest and fosters innovation.

The department may commercialise or apply cost recovery guidelines to IP if:

a. it has an explicit statutory function to do so; or
b. it has been explicitly authorised by the Minister of Finance to do so because of a clear net benefit to the Victorian community[1].

6. Departmental employees must not commercialise departmental IP for their own purposes

The department's employees must not commercialise departmental IP for personal or private gain. The department's *Other Employment Policy* defines the parameters within which employees may engage in other employment and the related procedures and permissions.

7. Departmental IP is identified and recorded appropriately

The department and agencies identify and record IP in their possession, where that IP:

a. involves statutory registration and renewal processes
b. is critical to a deliverable or a core function of the agency;
c. or requires active risk management.

RESPONSIBILITIES AND GOVERNANCE

All staff, contractors and volunteers, including school based staff, are responsible for aligning their creation and use of IP with the principles in this Policy. All staff are responsible for records management of IP created in the course of their work and declaring any potential conflicts of interest in their use of IP in their work at the department or in other employment or commercial opportunities.

The Secretary has responsibility (which may be delegated) for applying the State's IP Policy to IP managed by the department.

Executive directors, directors, school principals and deputy principals have been delegated responsibility to implement the policy for the corporate divisions/regions and schools respectively.

Integrity, Assurance and Executive Services Division (IAESD) is responsible for the development, implementation and maintenance of the department's IP Policy and manages the schools' statutory and voluntary licences for educational uses of copyright material. IAESD is responsible for providing specialist advice and guidance to support compliance with the Policy.

The Department of Treasury and Finance is responsible for the State's IP Policy and manages the statutory licences for government uses of copyright material. The Minister for Finance is responsible for considering and approving proposals for commercialisation of the State's IP[2].

APPROVING AUTHORITY

The Policy was approved by Gill Callister, Secretary, Department of Education and Training in October 2018.

REVIEW

This Policy will be reviewed and updated on an annual basis from the date of its commencement.

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[1] While the State's IP Policy states that the Treasurer is responsible for authorising requests to commercialise IP, the Intellectual property guidelines for the Victorian Public Sector (Version 1) March 2015 provide that in practice the Minister for Finance is responsible for authorisation requests under Principle 8(b).

[2] Refer to footnote 1

ACCOUNTABLE OFFICER

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COMPLIANCE AND REPORTING

This Policy is mandatory for the department and its agencies. Any breaches of this Policy involving the department's IP, or the IP of others, should be reported to the Copyright Officer via line management.

Audits of the department's publications and website licenses may take place at any time.

APPENDIX 1: RELATED POLICIES AND GUIDELINES

State policies

The Whole of Victorian Government Intellectual Property Policy Intent and Principles details the State's framework for the ownership and management of its intellectual property (IP), and for its use of IP belonging to other parties.

The Intellectual Property Guidelines for the Victorian Public Sector are guidelines to support the IP Policy, providing additional background and context.

The Code of Conduct for Victorian Public Sector Employees describes the behaviours that promote the values contained in the Public Administration Act 2004.

Departmental policies

The Other Employment Policy defines the parameters within which employees may engage in other employment and the relating procedures and permissions.

Conflict of Interest defines the obligation of employees to avoid conflicts of interest. The Conflict of Interest Toolkit comprises fact sheets, checklists, case studies and quick tips, which are designed to provide practical assistance to departmental employees in addressing day to day conflict of interest scenarios, including managing conflict of interest in other (external) employment.

The Records Management Policy establishes the framework for the effective management of departmental records in an environment in which records management roles, responsibilities and functions are shared across all areas of the business.

The Copyright Release Guidelines – How to release our content under a copyright licence provides guidance on applying a copyright licence to new material produced by the department before it is released to the public, and releasing existing works in response to a copyright permission request. These guidelines apply to all documents produced by the department for release to the public on the department's website or in print, including reports, policy documents and text-based information.

The Acceptable Use Policy for ICT Systems outlines appropriate use of the department's information, communication and technology (ICT) resources to ensure that all use is legal, ethical and consistent with the aims, values and objectives of the department and its responsibilities to the students in its care.

The Privacy Policy sets out how the department is to collect, hold, manage, use, disclose or transfer personal and health information in accordance with the Information and Health Privacy Principles contained within the Privacy and Data Protection Act 2014 (Vic) and the Health Records Act 2001 (Vic).

The Schools' Privacy Policy defines how Victorian government schools may collect, use, disclose and manage personal and health information, consistent with Victorian privacy law.

The Social Media Guidelines provides guidance to school staff on meeting obligations and recommended standards of behaviour when using social media tools for personal or professional purposes.

APPENDIX 2: VICTORIAN GOVERNMENT INTELLECTUAL PROPERTY 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

7. The State is not in the business of commercialising intellectual property, and does not create intellectual property in order to generate a financial return.
8. An agency may commercialise or apply the [State's] Cost Recovery Guidelines to, intellectual property if:
    a) it has an explicit statutory function to do so; or
    b) 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

9. When State procurement may result in intellectual property being generated, the State:
    a) addresses in an agreement any rights to intellectual property (including pre-existing IP) that may arise as a consequence of the procurement.
    b) secures a licence to the intellectual property, only to the extant necessary to achieve the purpose of the procurement; and
    c) only acquires ownership to the intellectual property if a licence is not adequate in the circumstances.

Funding and grants towards the development of intellectual property

10. When the State provides a grant or similar funding for an identified purpose or project; the State:
    a) addresses in an agreement any rights to any intellectual property (including pre-existing intellectual property) that may arise as a consequence of the grant or funding;
    b) 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;
    c) if a licence would not be adequate in the circumstances, acquires ownership of the resulting intellectual property; and
    d) ensures that overall 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

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

Identification and recording of intellectual property

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

a) involves statutory registration and renewal processes;
b) is critical to a deliverable or a core function of the agency; or
c) requires active risk management.