



DEPARTMENT
of EDUCATION

INFORMATION SERVICES

File:

Strategic Policy Managing our Intellectual Property

November 2004

Policy statement

The Department of Education recognises intellectual property (IP) is a valuable resource for the Department, the Tasmanian community and business sectors, and manages it as such. IP management focuses on meeting the objectives of the Department and maximising the operational value of the IP and takes into consideration the following socioeconomic objectives:

- The maintenance and enhancement of IP assets in order to foster:
 - innovation, knowledge generation and the sharing of resources and ideas;
 - academic and social recognition of Tasmania's education, library and other community services;
 - appropriate monetary return for the Crown, and business units within it.
- The stimulation of economic and industry growth by providing opportunities for private sector uptake and for commercialisation of government IP assets.
- The promotion and uptake of IP that has a broader societal value, but which would otherwise remain within the Department.

Scope

This policy defines a strategy and clarifies the role of intellectual property management within the context of the Department's activities and goals.

This policy focuses on one aspect of IP management, namely copyright management, as almost all IP produced within the Department is covered by the Commonwealth's *Copyright Act 1968*.

This policy only covers the management of IP created within the Department; the use of others' IP is addressed as a related but distinct process (see <http://www.education.tas.gov.au/deis/policies/copyright/>).

Rationale

Due to the nature of the business of the Department of Education, staff create, use and control a vast amount of intellectual property (IP). Some of this IP has value beyond the original reason for which it was produced. It is a valuable resource that should be managed proactively.

Decision-makers need appropriate advice and all employees need to understand some key principles of IP management. Problems can occur through a lack of knowledge about issues such as:

- Copyright ownership of IP produced by employees, volunteers and others.
- Recognition of moral rights of authorship and the distinction between moral rights and copyright.

- Processes for sharing our intellectual property with others, in particular the granting of licences rather than giving away our IP.
- The rationale and appropriate processes for managing commercialisation.

IP should be managed in a way that is consistent with other organisational goals, as articulated through Learning Together and other strategic documents. As with any other asset such as finance, human resources and information, IP should be managed on a proactive rather than reactive basis, if its value is to be maximised.

Purpose and goals

1. Maximise the value of the Department's intellectual property by:

a) Aiming for the best value on investment

We aim to achieve the best value on investment by:

- creating IP only when there are no viable alternatives; and
- only retaining economic rights in partnership arrangements when necessary for operational activities.

b) Facilitating appropriate community uptake and the commercialisation of Departmental IP.

IP assets often have value beyond their originally intended use. The uptake of the Department's IP by others through diffusion, transfer and commercialisation is encouraged particularly when such uptake can lead to Tasmanian educational, community and economic benefits.

IP assets are not developed within this Department expressly for the purpose of commercialisation. Commercialisation is an ancillary activity and should not be undertaken to the detriment of operational activities.

The Department has an obligation not to give its IP assets to others, but will grant licences for the use of those assets where appropriate. Ownership rights will only be assigned to others when there are clear specific reasons for doing so that have been agreed to by executive management.

2) Proactively manage IP within the Department by:

a) Clarifying copyright ownership for staff, students and volunteers.

Copyright ownership of work undertaken by employees

- Copyright ownership in all work created for work related purposes by employees during the course of employment with the Department of Education resides with the Crown.
- Employees, including teachers, creating intellectual property outside their normal working hours but which could be considered part of their work, must seek prior

acknowledgement of IP ownership if they wish to independently pursue ownership rights.

- An employee creating intellectual property outside their normal working hours but which cannot be linked with their work retains all copyright.

Copyright ownership by consultants, contractors or relief staff

- All contractors or consultants engaged by the Department for a fixed period or a specific area of work must be covered by a standard contract for services or consultancy contract. Under these standard contracts, the default stance is that copyright ownership resides with the Crown, but this stance is negotiable.

Copyright ownership by students

- Students retain copyright in any material produced during the course of their study. The Department may only use students' work for reasons other than for the education of the student or assessment with the written permission of the student and/or the student's parents/ guardians.

Copyright ownership of volunteers

- All volunteers should be made aware of their roles, obligations and rights before they become volunteers through simply worded written documentation. This documentation should clarify copyright ownership where appropriate. The Crown should only retain copyright associated with volunteers' work if this work may be needed by the Department.

Copyright ownership of researchers and pre-service teachers

- The copyright ownership of work produced by researchers and pre-service (student) teachers engaged with the Department of Education should be covered by induction information and a written agreement covering their roles, rights and responsibilities in relation to issues including intellectual property rights prior to their engagement with the Department.
- Employees undertaking formal studies which are based on or incorporated in their employee functions should clarify copyright ownership with their business unit manager prior to undertaking the studies. The Department will seek to ensure that the researcher or student is able to use any resulting intellectual property for the purposes of publication and commercial activity (provided confidentiality issues are not breached), but will aim to retain the right to use and adapt study or research outcomes for pursuing agency objectives.

b) Using IP management to encourage innovation and the sharing of ideas.

Innovation and the sharing of intellectual property within the Department is encouraged by acknowledging employees who have created valuable IP while performing their duties.

Sharing of ideas and information is encouraged between educational jurisdictions by granted a licence for free use of the resources for non-commercial purposes including education.

c) Acknowledging moral rights of authorship when requested and it is appropriate and feasible to do so.

This policy recognises that:

- There is a clear distinction between copyright ownership (economic rights) and moral (non-economic rights) of authorship.
- It is appropriate to not publicly attribute authorship for much of the work undertaken within the Department, largely due to the nature of the work. However, if staff members would like their authorship rights acknowledged, this will be accommodated where this is possible and appropriate.
- Effective moral rights management has benefits for the Department as well as the individual, particularly because it can encourage innovation and sharing. Staff will not be required to relinquish moral rights on a blanket basis.
- Decisions regarding the acknowledgement of moral rights will be made in accordance to departmental guidelines. In some areas of work, such as curriculum development, the issue of moral and economic rights will be addressed in projects through an upfront letter of engagement.

Definitions

Author(ship)

The individual who created a work, or the individual act of creating a work. Term used in relation to moral rights.

Commercialisation/Commercial Activity

The commercial exploitation of the results of innovation and creativity. It includes the licensing or sale (assignment) of associated IP rights.

Copyright

As defined by the Commonwealth's *Copyright Act 1968*.

(the) Department

The Department of Education, Tasmania.

Economic Ownership

In the context of this Department, copyright.

IP

Intellectual Property means all rights in relation to copyright, patents, registered designs, trade marks, trade secrets, plant breeders' rights and circuit layouts.

Moral Rights

The rights associated with authorship under the *Copyright Act 1968*.

“Valuable” Intellectual Property

Any IP that has significant value to the Department due to:

- Its use in achieving agency and government objectives.
- Its worth in helping to achieve Tasmanian community benefits.
- Its innovativeness and potential commercial value.

Works

Creative outputs, such as written material, artistic, musical and dramatic works, computer software, compilations, film and sound recordings, circuit layouts, designs, patents and trademarks.

Requirements

This section provides guidance on:

- Working in partnership with external organisations and individuals
- Using appropriate contracts
- Identifying valuable IP
- Protecting the Department's IP
- Asserting copyright ownership
- Pursuing commercial activity appropriately, including pricing and revenue distribution models
- Supporting consistent decision-making regarding IP management

Areas not included are:

- *Processes for dealing with moral rights requests, including requests for recognition and grievances. This area will be addressed by Information Services after a policy direction has been agreed to by executive management.*
- *Guidelines and standards for commercialisation. This area will require further examination by the Business Strategy Section once policy has been ratified.*

Working in partnership with external organisations and individuals to create and maintain IP.

Where possible and appropriate, the Department works in partnership with others to develop new IP.

While the default position for working with contractors remains that all economic IP rights remain with the Crown, the Department is willing to negotiate this point with private sector partners wishing to exploit or improve such IP except when this would interfere with the primary work or objectives of the Department.

Where there is joint ownership of IP, or IP rights are granted to an external party, there must be a formal legal contract covering issues of use, risk and liabilities.

Using appropriate contracts which address IP management issues.

All contracts covering areas in which IP might be created should specifically address IP ownership issues. Such contracts include grants, contracting and consulting contracts.

Such contracts must be reviewed by internal legal advisors unless they are in the form of pre-approved standard form Crown contracts.

Identifying IP with commercial value

Managers may choose to keep a record of valuable IP in their area. However, there is no departmental-wide directive to do so.

The Business Strategy Section should be notified of any commercial activity concerning departmental intellectual property.

Protecting the Department's IP

The Department of Education protects its intellectual property by:

- Appropriate information security measures, as outlined in the Tasmanian Government Information Security Charter.
- Using copyright notices.
- Following up significant breaches of Crown copyright.

Asserting copyright ownership through copyright notices.

All material developed within the Department of Education that is made publicly available should include or be linked with a copyright notice.

The default copyright notice for information published on the web is the State Government general notice, which can be found at <http://www.tas.gov.au/stds/codi.htm>. This notice permits information to be used free of charge for non-commercial purposes.

For print material there may be a short copyright notice directly on material in the form of © State of Tasmania <Department of Education/Business unit (optional)>

<year>, and plus a statement granting a licence to use and reproduce the information for non-commercial purposes only.

The level of business unit named optionally in any copyright statement is at the discretion of each division within the agency but should be the level at which decisions regarding copyright will be made.

Schools and colleges which are part of the Department of Education and individual departmental business units are not legal entities separate from the Crown. Therefore, any copyright in works created in those units is owned by the Crown, not the individual schools, colleges or units.

Pursuing commercial activities in a way that is open and transparent, has clear responsibilities and risk mitigation strategies, and which takes into consideration the broader goals of the Department.

Commercial activity must be managed in a way that is fair, open and transparent, establishes clear responsibilities and takes into consideration the broader goals of the Department. This can be achieved by ensuring that:

- IP rights are valued taking into consideration the Government's investment in the IP and any community or state economic goals supported by releasing the IP for commercial purposes.
- IP is only licensed or assigned if it is clear the Crown has the right of title to that IP. All background and third party IP will be identified and licences obtained.
- Commercialisation partners are chosen taking account of:
 - A competitive application process, following the Governments procurement guidelines, or as a divisible licence.
 - The amount of background or original IP that comprises part of the end product already held by a prospective developer (e.g. IT developer who produced the product for the Crown).
 - Reasonable opportunity for involvement available to all interested parties in Tasmania.
- Any potential conflicts of interest are managed in an open manner consistent with existing policies.
- Commercialisation and diffusion of an IP asset is consistent with the National Competition Policy and the principles of competitive neutrality in line with Treasury requirements.

Risk mitigation strategies should be used to minimise exposure of the Crown to commercial risk. Such strategies include, but are not limited to:

- Ensuring warranties are appropriate, manageable and that legal agreements include liability caps or indemnities from liability.
- Ensuring the Crown has the right or title to any IP it licences or assigns.

- Retaining a licence and right to use the IP for government purposes.
- Obtaining access to improvements made by any commercial partner and ensuring these improvements are reasonably consistent with ongoing departmental objectives.

Any revenue from commercialisation will be managed through the Department's Pricing and Revenue Distribution Model.

Ensuring supported and consistent decision-making on IP management

Supported and consistent decision-making is supported through:

- The advice of central business units including the Department of Education Information Services, the Business Strategy Section and the Ministerial and Coordination Unit. These units are further supported by the Department of Premier and Cabinet, particularly the Administrator of Crown Copyright, Crown Law and inter-agency policy units.
- Decision-support forms. (*a draft prototype of these forms have been developed by Information Services*)

Responsibilities

All business unit managers are responsible for decisions regarding IP in their area.

IP management is supported within the Department through the following mechanisms:

- The Business Strategy Section provides reports on commercial activity.
- Education and awareness for staff on IP issues and ongoing policy development and dissemination is coordinated by the Department of Education's Information Services.
- Investigating and possibly pursuing suspected infringements of the Department's IP assets is coordinated by the Ministerial and Coordination Unit.
- Centralised knowledge is provided as follows:
 - The Business Strategy Section provides advice on issues involving commercialisation and the sharing of IP outside the Department.
 - The Ministerial and Coordination Unit provides guidance on specific legal issues and a gateway to the expertise within the Solicitor General's Office.
 - Information Services provides general guidance on IP issues.