Intellectual property and copyright use

Implementation Date: 11/02/2020
Version: 4.2

Audience
Department-wide

Purpose
Defines intellectual property and outlines the responsibilities of departmental employees and key processes in managing intellectual property.

Overview
Intellectual Property (IP) covers a wide range of rights that protect the product of original and creative effort, including copyright, patents, industrial designs and trademarks. Copyright makes up a major part of the department's IP.

The Copyright Act 1968 (Cwlth) (Copyright Act) gives copyright owners exclusive rights over how others may use their work subject to statutory licences and exceptions available under the Copyright Act.

The Statutory Licences for Educational Institutions under Part VA and Part VB of the Copyright Act allow teachers to reproduce in digital and hard copy formats, literary, dramatic, musical and artistic works as well as record off-air TV and radio broadcasts, for educational purposes within the limits described in the National Copyright Guidelines. As part of these statutory licence agreements schools must participate in copyright surveys, as required.

The department is also a signatory to the National Education Access Licence for Schools (NEALS) agreement that allows Australian schools to copy from each other’s websites and publications free of charge, for educational purposes.

Permission from the copyright owner is required if the educational licences or exceptions of the Copyright Act, or NEALS licence, do not apply.

State schools seek a student's permission to use their copyright works in accordance with procedure Obtaining and managing student and individual consent.

The Copyright Act provides that the State (as the employer) owns the copyright in material created by its employees in the course of their duties unless otherwise agreed between the employer and employee.
It does not matter that the employee creates the material (either wholly or in part) outside normal work hours and without using departmental facilities or equipment. Generally, the deciding factor is whether the materials created relate to the employee’s official duties. Written agreement between the employer and employee, recognising an employee’s copyright ownership is required prior to the employee creating works connected with employment or using the department’s IP in a private capacity.

However, the department recognises an employee may have moral rights in the copyright material created during employment. Refer to the Guideline on Moral Rights.

The State (through the Department of Education) also owns copyright in an original literary, dramatic, musical or artistic work if first published in Australia by, or under the direction or control of the State, subject to any contrary agreement. All agreements involving IP are to stipulate who legally owns the IP as well as address any moral rights.

The department will endeavour to commercialise intellectual property assets that it owns or manages for the benefit of the State but will not do so in a manner, which would significantly interfere with the department’s operational activities or service delivery.

The department must make its public sector information available for use by the community under an appropriate Creative Commons (CC) licence.

Responsibilities

All Staff

- Identify and record ownership of IP created, acquired, received, held or used by the department
- Apply the least restrictive of the CC licences appropriate to the department’s materials
- Inform directors, executive directors and principals of IP assets of special value or importance including IP assets of public, strategic, innovative or financial value including copyright materials to be sold or licensed to a third party
- Take reasonable steps to keep IP of special value or importance confidential, prior to its publication or commercialisation
- Avoid infringing the IP rights or moral rights of others
- Ensure all departmental publications containing third party copyright materials, are marked ‘not available under NEALS’, unless appropriate licences have been obtained
- Seek the necessary approvals in writing, clarifying IP ownership, before creating IP or using the department’s IP (software app, website, textbook, video, game, curriculum resource etc.), connected with employment in a private capacity
- Request permission from your HR line manager before entering into an agreement to create and develop IP for another entity including another employer. Refer to Notification of other employment procedure.
Directors / Executive Directors / Principals

- Inform Director, Information and Governance Management of all IP assets of special value or importance owned by the department including assets to be sold or licensed to a third party
- Assert State ownership of IP by ensuring all contracts (including outsourcing, consulting and contracting agreements), in which IP might be created, address issues of pre-existing IP and IP created under the contract
- Approve publication of the department’s Public Sector Information (PSI) with an appropriate CC licence in accordance with the department’s Information privacy and right to information procedure and Queensland Public Sector Intellectual Property Principles
- Approve permission requests from other parties to use departmental IP including copyright materials not licensed under a CC licence
- Approve the transfer or assignment of the department’s IP to other parties in accordance with applicable policies and procedures
- Acknowledge the moral rights of employees/consultants where appropriate
- Approve requests from employees wishing to enter into an agreement to create and develop IP for another employer, publisher, organisation or individual. Refer to Notification of other employment procedure
- Provide advice to Legal and Administrative Law Branch (LALB) about copyright materials that are subject to a copyright permission request from a third party.

Director, Information and Governance Management, Digital Transformation, Information and Technologies Branch

- Governs the processes for all significant departmental owned IP and manages the Intellectual Property register
- Assist employees to identify IP assets suitable for inclusion in the register
- Assist applicants and departmental officers with requests, seeking permission to use departmental IP
- Process permission requests to use departmental IP excluding copyright materials licensed under a CC licence.

Executive Director, Legal and Administrative Law Branch

- Provide legal advice on copyright issues
- Advise on agreements between the department and other parties to ensure they adequately address IP ownership issues (including terms and conditions of use) and clearly state all relevant details regarding the departmental publications and products to be utilised or created under the terms of the agreement
- Provide advice on any proposed transfer or assignment of intellectual property rights to other parties.
Process

All staff are to undertake the following processes.

Identifying significant IP for inclusion in the department’s IP Register

- Determine significant departmental IP assets by using the following criteria:
  - significant time and effort expended to create the IP
  - significant funds spent to create/acquire the IP (i.e. more than $20,000)
  - the IP is important to the department’s core activities
  - the IP is registered with a relevant authority (i.e. patents, trademarks, plant breeder’s rights and designs)
  - revenue is earned from licensing the IP
  - it comprises a collection of IP assets (e.g. photographs, data contained in a database, advertising materials)
  - Seek advice from Director, Information and Governance Management on issues related to identifying significant departmental IP assets

- Inform the relevant Director/Executive Director/Principal of significant departmental IP.

Ensuring ownership and control of the department’s IP

- Mark all works owned and published by the department with a copyright notice that includes the name of the department and year of publication
- Mark materials, published by the department that contain third party copyright materials, with a supplementary notice, ‘not part of NEALS’, unless appropriate licences have been obtained
- Apply CC licence on all departmental publications that comprise public sector information in accordance with Queensland Public Sector Intellectual Property Principles
- Create and maintain records for all departmental published works including online print materials, videos, podcasts, images, brochures, etc. and include:
  - who created the materials (employees, volunteers, consultants or service providers)
  - copies of associated agreements
  - copies of permissions allowing the department to use third party owned copyright materials and the terms of the permissions
- Seek legal advice from Legal and Administrative Law Branch on issues of ownership
- Where appropriate protect IP of special commercial value or importance by use of a confidentiality deed or Creative Commons Restricted licence or terms of contract
  - Seek advice from Legal and Administrative Law Branch to ensure the confidentiality deed, restricted licence or contract meets the business unit’s objectives
- Assist persons wishing to use the department’s owned copyright materials by directing them to the Information Management team
• Forward all requests received from third parties, to use the department's owned copyright materials not licensed with a CC licence, to the Information Management team.

Using third party IP

• Seek the least restrictive CC licence from third party copyright owners for use of their materials
• Comply with the terms of any relevant copyright licence/permission/contract
• Comply with terms of Statutory Education Licences, Part VA and Part VB or exceptions available to schools as described in the National Copyright Guidelines
• Obtain copyright authorisation from copyright owners whenever required in accordance with the Queensland Government Use of copyright materials guideline
  o For permissions from volunteers and students enrolled at a school follow the department’s procedure described in Obtaining and managing student and individual consent
• Conduct trademark, business name, patent and design searches when relevant
• Inform copyright owners in accordance with section 183(4) of the Copyright Act (relating to acts done ‘for the services of the State’), when necessary
• Obtain copyright approvals from custodial agencies for use of Queensland Government copyright materials not publicly accessible or where the material intended to be distributed to individuals or organisations outside the department
• Attribute third party copyright owners clearly for all uses of their works within departmental publications
• Recognise the moral rights of authors who are employees or consultants, on request and if appropriate and feasible
• Mark materials published on the department's internet and containing third party owned works with ‘not available under NEALS’, unless appropriate licences have been obtained.

Definitions

| Educational purpose {Copyright Act} | Educational purpose (Copyright Act) includes a reproduction or communication of the material:
|                                  | • for teaching purposes
|                                  | • used as part of a course of study
|                                  | • retained for library use as a teaching resource.
| Public Sector Information (PSI) | Public Sector Information (PSI) includes departmental reports and review documents, annual reports and strategic plans, data sets, community information, policy and procedure documents and fact sheets.
| Rights of the copyright owner | Rights of the copyright owner include the right to:
|                                 | • reproduce the work in a material form – photocopy/scan /print
|                                 | • publish the work – supply copies to the public |
- communicate to the public - email, make available on-line or to include the work on free –to-air or pay TV
- perform the work in public
- adapt the work – write a screenplay based on a novel, a new arrangement of a song
- cause to be seen or heard in public (films, sound recordings and broadcasts)
- re-broadcast
- authorize others to do the above.

Legislation

- Copyright Act 1968 (Cwlth)
- Financial and Performance Management Standard 2019 (Qld)
- Public Records Act 2002 (Qld) Section 8 (1)
- Right to Information Act 2009 (Qld)

Delegations/Authorisations

- Nil

Related policies

- Code of Conduct for the Queensland Public Service
- Standard of Practice
- National Copyright Guidelines
- National Education Access Licence for Schools
- Queensland Government Information access and use policy (IS33)
- Queensland Public Sector Intellectual Property Principles

Related procedures

- Notification of other employment
- Information privacy and right to information
- Obtaining and managing student and individual consent

Guidelines

- Queensland Government Use of copyright materials guideline
- Guideline on Moral Rights
Supporting information/websites

- Creative Commons licence
- Intellectual Property register
- Moral Rights Consent Form

Contact

For further information, please contact:

- Copyright team, Information and Governance Management
  Information and Technologies Branch (I&T Branch)
  Email: Copyright.ITB@qed.qld.gov.au

Review date

9/07/2014

Superseded versions

Previous seven years shown. Minor version updates not included.

4.0 Intellectual property and copyright use

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