

Department of Education and Early Childhood Development: Intellectual Property and Copyright Guidelines

Contents

1	Introduction: about the Guidelines	1
2	What is intellectual property?.....	1
2.1	Introduction.....	1
2.2	What is copyright?.....	2
2.3	Copyright owner's rights.....	2
2.4	Moral rights	2
2.5	Duration of copyright	3
2.6	Copyright infringement	3
2.7	Penalties for copyright infringement.....	3
3	Overview of the creation, acquisition & management of intellectual property .	4
4	Creating, recording and reporting intellectual property	4
4.1	Creating intellectual property	4
4.1.1	IP created by contracts.....	5
4.1.2	Information & Communication Technology Contracts.....	5
4.1.3	General contracts for goods and services	5
4.1.4	IP created by Departmental staff	7
4.1.5	IP created by students.....	8
4.1.6	'Third Party' intellectual property	8
4.1.7	Labelling of copyright material.....	9
4.2	Recording intellectual property	9
4.2.1	The need to record Intellectual Property.....	9
4.2.2	The Department's IP register.....	10
4.2.3	Recording trademarks.....	10
4.3	Reporting intellectual property	10
4.3.1	Reporting IP in the Department's financial statements	10
4.3.2	The IP reporting process.....	10
5	Managing and using intellectual property	11
5.1	Reproducing and Communicating IP	11
5.1.1	What is 'copying'?	11
5.1.2	What can corporate staff reproduce and communicate?.....	11
5.1.3	The Departmental licences.....	11
5.1.4	Permitted under licence from the copyright owner.....	12
5.1.5	Statutory exceptions.....	12
5.1.6	Obtaining permission from the copyright owner.....	13
5.2	Obtaining permission to use intellectual property	13
5.2.1	Circumstances when permission is required to use others' IP.....	13
5.2.2	Obtaining permission from a copyright owner.....	14
5.3	Managing intellectual property licences	15
5.3.1	What is a licence?	15
5.3.2	Types of Licence	15
5.3.3	Licences to use others' intellectual property	16
5.3.4	Obtaining licences to use others' intellectual property	16
5.3.5	Licences granted by the Department to others	16
5.3.6	Recording licences in the Department's IP Register.....	16
5.4	Authorising the use of intellectual property	17
5.4.1	The policy on use of Departmental IP by others (this section has been removed. Refer to the Interim Copyright Permissions Guidelines located on the Department's website).	17
5.4.2	The process for authorising use of Departmental IP by others .. Error! Bookmark not defined.	
5.5	Managing the Department's trade marks	17

5.5.1	What is a trade mark?	17
5.5.2	Registering a trademark	17
5.5.3	Recording a trade mark in the Department's IP Register	18
5.5.4	Managing a trademark registration	18
5.5.5	Trade mark infringement	18
6	Further Information	18
6.1	The Department's Copyright Officer.....	18
6.2	Computer Software Licensing and Management.....	18
6.3	Intellectual Property Legislation.....	19
6.4	Internet References	19

Figures

Figure 1: Summary of processes for creating and managing IP	4
Figure 2: Who should own IP created under contracts?	7

1 Introduction: about the Guidelines

These guidelines provide an overview of:

- what 'intellectual property' and 'copyright' is
- what staff need to know about dealing with intellectual property and copyright
- the systems and processes that the Department has put in place to assist staff to manage intellectual property and copyright
- the support and specialist advice available to staff

Intellectual property is created and used by Departmental staff in the course of many day-to-day activities. These guidelines are divided into three sections:

- a section dealing with [what intellectual property and copyright is](#);
- a section dealing with [how we create, record and report intellectual property](#); and
- a section dealing with [how we manage intellectual property](#) – our own and that of others.

Copyright is only one kind of intellectual property – but it gets special attention in these guidelines because it is the most common form of intellectual property that we encounter. The way we use copyright material has become more important in recent years, because the technology to facilitate the copying and distribution of print and electronic copyright material is now widely available. At the same time, the cost of our copying (copyright fees), and the potential for both the Department and individual staff to be liable for penalties if we infringe copyright, has increased significantly. This adds up to a need to use copyright material appropriately and effectively.

A separate set of guidelines has been prepared dealing with copyright management in schools, because schools (educational institutions) have special rights under the *Copyright Act 1968*. The *Copyright Guidelines for Victorian Government Schools* can be downloaded from the DEECD IP & Copyright web pages at <http://www.education.vic.gov.au/management/governance/copyright/resources.htm>.

2 What is intellectual property?

2.1 Introduction

The term 'intellectual property' refers to the legal rights associated with the product of people's imagination and creativity. Intellectual property rights can be dealt with like any other form of property (such as land and goods) – they can be bought, sold, and leased (licensed). One of the rights is the right to prevent other people dealing with the products of imagination and creativity.

For the Department's purposes, the most common form of IP is 'copyright'. Other forms of IP are:

- **trademarks** that is, words, phrases or logos (or a combination of those) that are used to identify the goods or services of an organisation (in certain circumstances, trade mark rights may also extend to sounds, smells, shapes, or aspects of packaging);
- **patents** for new or improved products or processes, or a combination of those;
- **designs** for the appearance of products;
- **circuit layout rights** for certain layouts for integrated circuits
- **plant breeder's rights** for new plant varieties; and
- **trade secrets** including know-how and other confidential or proprietary information.

The forms of IP with which we are concerned in the Department are copyright and trademarks. The other forms of IP are not generally encountered.

2.2 What is copyright?

Copyright protects the original expression of ideas in a material form – for example, original works of art, literature, music, films, broadcasts and computer programs. Copyright protects only the material expression of ideas, not the ideas themselves.

Copyright protection is provided automatically when a work is created - no registration is required. Copyright ownership may be indicated by the presence of a copyright notice – eg © Department of Education and Early Childhood Development 2007 – and while this is recommended, it is not essential. (See [‘Labelling of copyright material’](#) for more information). Copyright is automatic once a work has been put into a material form, such as the written text of a novel. A work is protected by law in Australia providing that:

- it is original; and
- the author is a citizen or resident of Australia, or the work was first published in Australia.

Australian law also protects copyright materials made in most other countries under international arrangements.

2.3 Copyright owner’s rights

The term ‘copyright’ refers to a set of exclusive legal rights that copyright owners can exercise. The legal protection is provided by the *Copyright Act 1968* (Cth) (**Copyright Act**). This legislation gives copyright owners exclusive rights over the work while copyright subsists (see [Duration of copyright](#)). Rights vary according to the nature of the work, but generally include rights to:

- **reproduce** (copy) the work;
- **perform** the work in public;
- **communicate** the work to the public;
- **make an adaptation** of the work; and
- **publish** the work (i.e. to make it public for the first time)

The rights exist from the time that the material is first put in material form, for example first written down, saved to disc, painted or drawn, filmed or taped.

Whilst copyright subsists, the copyright owner has the exclusive right to use the copyright material unless a use is authorised by:

- the copyright owner, i.e. a permission or licence is given; or
- the Copyright Act, i.e. a [statutory licence](#) or ‘[exception](#)’ applies.

Copyright statutory licences and exceptions are discussed in more detail below.

Note: The word ‘public’ has a special meaning in the Copyright Act. It can include staff and students in a school, or Departmental staff. For example, placing material on an intranet or playing music at a work event is still considered to be a communication or performance to the public.

2.4 Moral rights

In 2000, the Copyright Act was amended to introduce a new set of rights for creators/authors of material called moral rights. Moral rights recognise the personal connection of creators to their work, and act to preserve the creative integrity of the work. Only individuals have moral rights.

Note: These rights are quite separate from and distinct to copyright rights.

Moral rights entitle individual creators:

- to be identified as the creator of the work (the right of attribution);
- not to have their work attributed to someone else (false attribution); and
- to object to any derogatory treatment of their creations, which might harm their honour or reputation (the right of integrity).

In general moral rights apply to all literary, dramatic, musical and artistic works, and films which are protected by copyright. Moral rights cannot be waived or assigned by creators. However, an author can give consent to a particular treatment of a work that might otherwise infringe his or her moral rights. This consent must be in writing.

2.5 Duration of copyright

The duration of copyright depends on the type of work involved – but is generally 70 years after the death of the creator. Crown copyright (i.e. the Department's copyright) subsists for 70 years after the end of the year in which the material was first published by the government. (Note: The time period relating to non-Crown copyright changed from 50 years to 70 years on 1 January 2005, so in older publications you may see references to 50 years.)

After copyright ceases to exist, material is said to be 'in the public domain' and can be freely used.

2.6 Copyright infringement

Copyright infringement is the unauthorised exercise of one of the copyright owner's exclusive rights. Common examples of copyright infringement that could occur in this Department are:

- copying more than the amount of a work permitted under the education statutory licences, a voluntary or direct licence, or a fair dealing exception;
- placing music on the Internet for download by students or the public;
- downloading and sharing MP3 files of music, videos, and games without permission of the copyright owner;
- scanning a photograph that has been published and using it without permission or attribution and in the absence of an exception (lack of attribution would be an infringement of the creator's moral rights);
- installing more copies of a software program on computers than are allowed for in the relevant licence agreement.

2.7 Penalties for copyright infringement

If copyright is infringed, the copyright owner generally has the right to take legal action to recover damages – that is, a sum of money intended to compensate the copyright owner for money lost due to the infringement. The amount of damages will depend on the circumstances. Where an infringer has made a profit from the copies made, the copyright owner can seek to recover that profit instead of damages.

In some circumstances, infringement of copyright is a criminal offence to which fines and jail terms may apply. The criminal provisions generally apply to commercial piracy and have been applied particularly in relation to people infringing copyright in music, videos and computer software.

An employee who infringes copyright is generally liable in their own right. However, their employer may also be liable if the employee was acting on instructions, or if the employer did not take reasonable steps to ensure that the employee did not use the employer's equipment to make the infringing copies.

3 Overview of the creation, acquisition and management of intellectual property

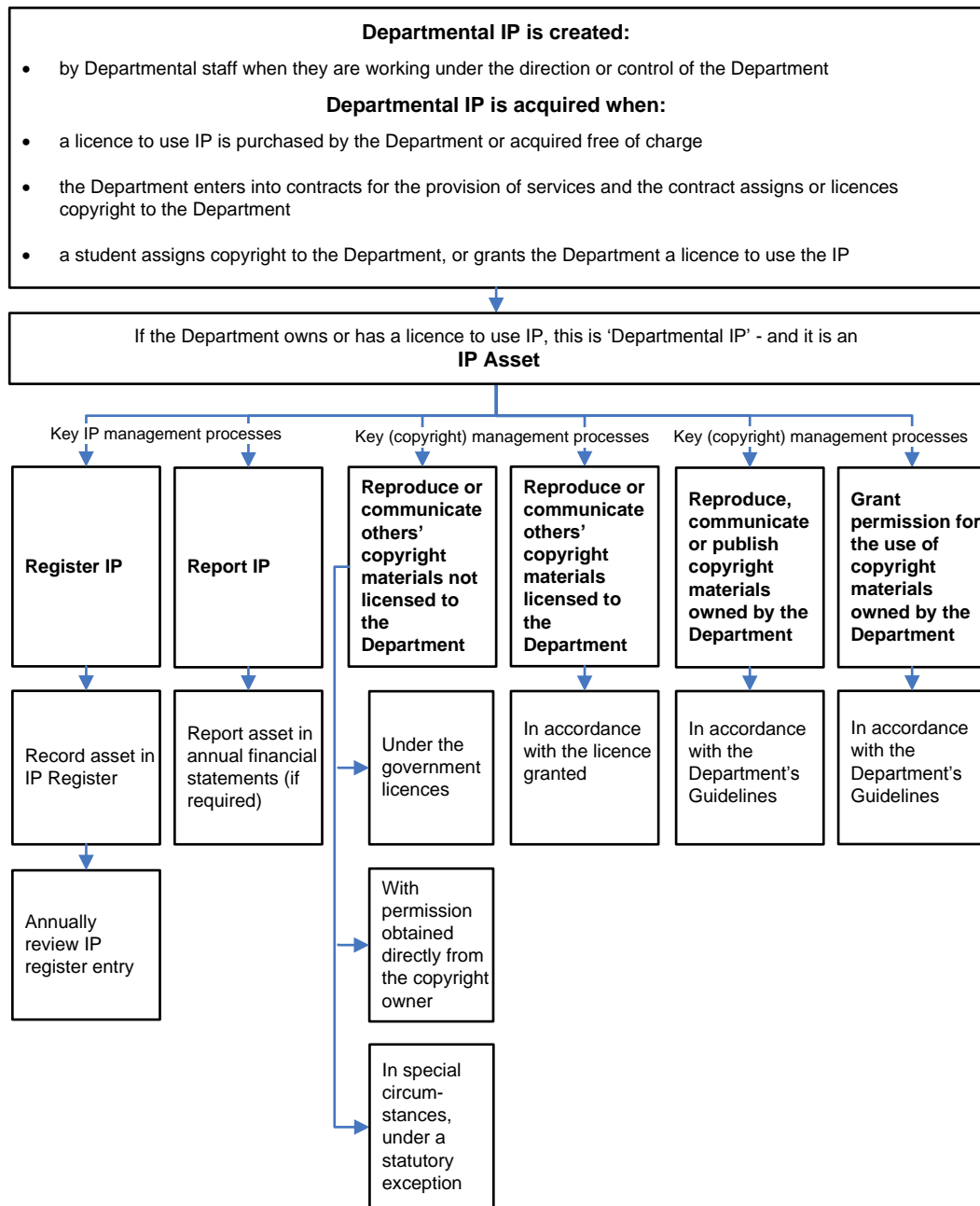


Figure 1: Summary of key processes for creating and managing IP

4 Creating, recording and reporting intellectual property

4.1 Creating intellectual property

Intellectual property is created by a range of activities which we routinely undertake at work. For example, IP is created when:

- the Department contracts with a service provider or consultant to produce a report, learning object, graphic design, or software application.

- Departmental employees produce, as part of their duties at work, reports, learning objects, designs, software applications etc.

4.1.1 IP created by contracts

IP frequently results from contracts that the Department enters into for the provision of services. The deliverables under many contracts are the result of intellectual effort – such as

- a report on research undertaken on behalf of the Department by a university;
- a software application developed for deployment on the Department's IT system.

At present, there are different approaches to dealing with IP in Information and Communication Technology (ICT) contracts and in general contracts for goods and services:

- **ICT contracts.** Whole-of-Government policy requires that intellectual property resulting from these contracts is owned by the contractor.
- **General contracts for good and services.** In the standard Department contracts, intellectual property resulting from the contract is owned by the Department.

Each of these types of contract is dealt with in more detail below.

4.1.2 Information & Communication Technology Contracts

The new 'default' position in ICT contracts is that:

- the contractor will own the IP created under the contract; and
- the Department will have a royalty-free, perpetual, irrevocable licence to use the IP.

This is a whole-of-Victorian-government policy. For more information, you can download a set of guidelines from the [Office of the Chief Information Officer](#).

The logic which underpins this approach is that the Department should obtain better value for money from the contracts. For example, a contractor might be able to develop a software solution for which there are other potential buyers. In this situation the software has a commercial value. If the contractor receives the value of the software (i.e. the IP) under the contract, they should be able to offer their services to the Department at a lower price. The result should be a saving on the price of the contract for the Department.

If the 'default' position is not suitable in a particular situation, different IP clauses may be used in the contract. However, the approval of the Department's Secretary is required, as well as advice from Legal Services Branch. In the first instance, advice may be sought from Purchasing Advice & Policy Branch. (Email: purchasing@edumail.vic.gov.au)

4.1.3 General contracts for goods and services

The Department's standard contracts contain clauses which deal with ownership of the IP created as a result of the contract. Currently, the standard contract clauses provide for the Department to own all IP that is created.

The clause from the Department's current standard general purpose contract is shown below. (The Department's standard form contracts are located at: <https://www.eduweb.vic.gov.au/purchasing/toolbox/contracts.asp>)

8. INTELLECTUAL PROPERTY AND OWNERSHIP OF WORK

All intellectual property rights created, discovered or coming into existence as a result of or arising out this contract shall be the property of and vested in the State of Victoria. Intellectual property rights include any documentation produced by the contractor in providing the services.

Essentially the same clause is in the standard consultancy agreement:

8. INTELLECTUAL PROPERTY AND OWNERSHIP OF WORK

All intellectual property rights created, discovered or coming into existence as a result of or arising out this contract shall be the property of and vested in the State of Victoria. Intellectual property rights include any documentation produced by the consultant in providing the consultancy services.

The standard clauses can be varied *when this is in the Department's interests*, and with the permission of an officer in the Legal Services Branch.

How to manage the rights to IP created under contracts

The flowchart in Figure 2 may be helpful in determining how to manage the rights to IP created under contracts.

The key issue here is that if you are establishing a contract, you need to give some thought to who should own the IP that is created. Some questions to ask are:

- Is the IP likely to have a strategic value for the Department? In other words, is the IP something that the Department may not want another party to use? Such a situation may arise where the expression of an idea is associated with the Department, and it would not be desirable to have the expression used by other organisations. Most common examples of this are 'trademarks' or logos, but there could be others.
- Is the IP likely to have a market value? Are there likely to be buyers for the IP beyond the Department? Could the contractor modify and market the IP more widely?
- Is the Department going to exploit the value of the IP itself? In other words, is the Department going to obtain revenue from other parties for the use of the IP?

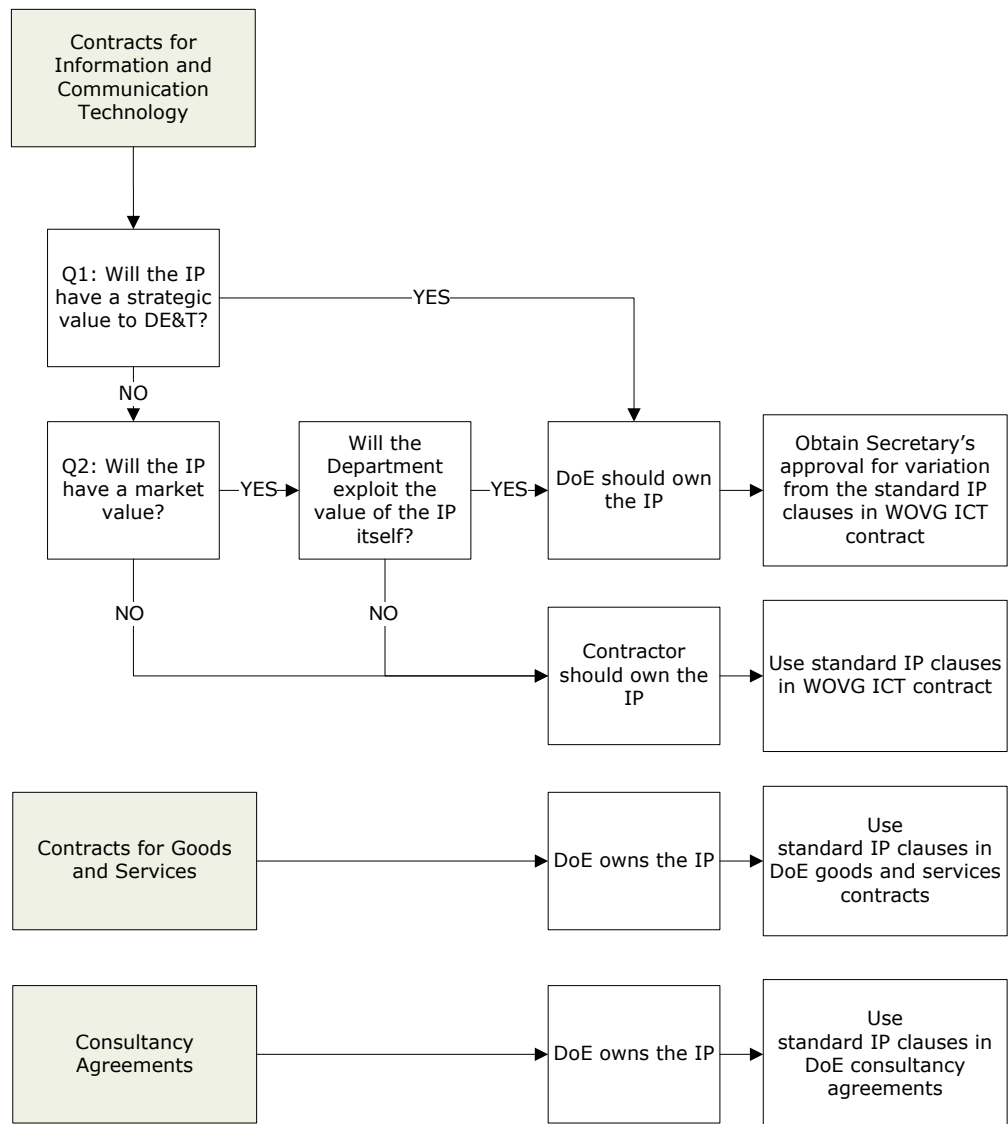


Figure 2: Who should own IP created under contracts?

4.1.4 IP created by Departmental staff

In other day-to-day work, Departmental staff may also create IP. Activities which could produce IP include the writing of reports, computer software, manuals and teaching materials. IP created in this way will be protected by copyright.

Who owns the copyright in material produced by Departmental staff?

The IP in work that is produced by Departmental staff is effectively owned by the Department. (In fact, it is owned by the 'Crown'.)

Section 35(6) in Part III of the Copyright Act provides that:

Where a literary, dramatic or artistic work ... or a musical work is made by the author in pursuance of the terms of his or her employment by another person under a contract of service or apprenticeship, that other person is the owner of any copyright subsisting in the work ...

The....state....is....the owner of the copyright in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the....state....

This covers the situation of all ongoing and contract employees. A related section is also contained in s176(2) Part VII of the Copyright Act which provides that the

Government is the owner of any work, film, recording etc made *by or under the direction or control of the Government*.

In short, the Department owns the copyright in all work done as part of an individual's work duties. This also applies where materials are created as part of professional development activities that form part of a staff member's employment (generally, such activities will be paid for by the Department and take place during working hours).

4.1.5 IP created by students

The intellectual property rights over original material created by students are retained by the students unless the students have been asked to assign these rights. It is not the Department's policy to ask for ownership of student works. However students may be requested to grant the Department a licence to use the works. Some schools request such a licence as part of the enrolment process.

Copyright over students' work typically becomes an issue when student material is incorporated into curriculum support materials or teacher professional development materials which are to be used at conferences and/or placed on the Internet. In such situations it is generally the case that permission to use the material needs to be obtained from the student, unless a licence has already been given. A form for obtaining student/parent consent can be downloaded from <http://www.education.vic.gov.au/management/governance/copyright/resources.htm>.

In addition, students retain rights known as 'moral rights' (see the relevant section below) which cannot be waived or assigned. The practical implication of these moral rights is that the work needs to be attributed to the student – but in a way which does not compromise their privacy or safety. For example, if student art is being displayed on the Internet, an appropriate form of attribution might be to use the student's first name and year level – but not the student's full name.

4.1.6 'Third Party' intellectual property

Departmental documents may contain what is referred to as 'third party' IP. This is where the IP rights in material incorporated into a document are owned by someone other than the Department. Permission should always be sought to incorporate someone else's copyright material in a Department publication, unless the use is covered by an existing licence. It is important that any such IP is recorded by the Department for two reasons:

- When others seek permission to copy documents in which the Department has copyright, unrestricted permission cannot be granted unless we can be sure that:
 - no third party IP is contained in the document;
 - the Department has the right to grant permissions/licences in respect of the third party IP; or
 - we are able to identify the owner of the third party IP so that their permission can also be sought.
- When others copy (under licence) documents in which the Department has copyright, they pay a copyright fee. The Department may be required to share this fee with the copyright owners of third party material incorporated into the document.

Examples of third party IP would be where:

- pictures, the copyright in which is owned by another person or organisation, are reproduced (with permission) in curriculum materials;
- the Department has developed curriculum materials which include a section developed by an education department in another state;
- a university researcher has produced a report for the Department which includes portions of material over which the university has copyright ownership.

The Department's [IP Register](#) provides a simple means of recording third party material and ensuring that others' copyright is not inadvertently breached.

4.1.7 Labelling of copyright material

The current guidance on copyright labelling requirements can be found at: <http://www.education.vic.gov.au/management/governance/copyright/resources.htm>.

Copyright notices

It is not necessary to include a copyright notice on original material in order for it to be protected by law. However, for administrative reasons, it is important that a copyright notice be included on all material which the Department makes public. This enables other parties to identify the copyright owner and how to contact them about reproducing or communicating the material.

Licence labelling

When material is produced that includes third party material used under direct licence, details of the licence arrangement will need to be included.

4.2 Recording intellectual property

4.2.1 The need to record Intellectual Property

The Department is required to maintain a Register of its IP. Three types of material will be captured in the Register:

- Items of significant commercial value;
- Items which contain 'third party' IP; and
- Items which require active ongoing management by the Department.

Items of significant commercial value

This includes all items of IP of significant commercial value. These items have to be reported in the Department's Annual Financial Statements. Australian accounting standards require that significant "intangible assets" are reported in an organisation's annual financial statements. This is dealt with in the section below titled [Reporting intellectual property](#).

Items containing 'third party' IP

A further mandatory requirement is that all Departmental copyright material which contains third party copyright material (copyright owned by someone other than the Department) must be recorded in the IP Register. This is to ensure that we do not inadvertently breach the third parties' copyright by allowing the publication to be used.

Items which require active ongoing management

The Register also offers the opportunity to capture the details of other items of original material which will require ongoing management for other reasons. To improve our ability to track publications, process requests to use Departmental copyright material and manage the Department's licences and subscriptions, the following types of intellectual property will be captured in the Department's IP Register:

- Databases maintained by the Department.
- Computer (software) programs developed by the Department:
 - for its own internal use; and
 - to be made available to schools and/or other education providers.
- Computer programs 'licensed in' by the Department.
- All Departmental publications that are formally published in print form – whether sold or provided free of charge.

- All documents, reports, information sheets etc that are made publicly available or widely available to an audience beyond the Department (for example, to all schools):
 - electronically via the Internet and intranets; and
 - in print form through mail-outs, handouts at conferences, information kits provided to schools etc.
- All copyright material – whether print or electronic – for the use of which the Department has paid a licence fee. (Excluding material which is ‘copied’ under a blanket (voluntary) or statutory licence.)
- Television and radio advertising material developed by or on behalf of the Department.
- Training materials developed by the Department.
- Trade marks or logos used by (or registered by) the Department.
- Artwork and photographs commissioned by the Department;
- Licences granted by the Department for the use of Departmental IP.

4.2.2 The Department’s IP register

In 2005, the Department co-ordinated the first Department-wide survey of intellectual property assets. Each Division provided a list of its intellectual property assets.

The introduction of an online IP Register to which all staff have access will remove the need for Divisions to keep ‘local’ IP registers and will make the process of recording and retrieving the details of IP quicker and easier. The online Register is presently being developed, and is expected to be available for use from the end of 2007. For further information, see:

<http://www.education.vic.gov.au/management/governance/copyright/register.htm>

4.2.3 Recording trademarks

It is advisable, though not essential, that trademarks be registered with [IP Australia](#). This is dealt with in the section on [managing trademarks](#) below. However, in addition to this formal registration, trademarks also need to be listed on the Department’s IP Register. By definition, a trademark is of strategic importance – otherwise we wouldn’t consider it to be a trademark. Therefore all trade marks should be included on the Department’s register.

4.3 Reporting intellectual property

4.3.1 Reporting IP in the Department’s financial statements

Government departments are required to meet accounting standards which include the Australian Accounting Standard [AASB 138 Intangible Assets](#). This is a relatively new standard which has only applied to government departments since the first financial reporting period after 1 January 2005.

The standard requires that intangibles assets are valued and that those of significant value are reported in the organisation’s annual financial statements.

4.3.2 The IP reporting process

Reporting is done annually based on the information provided by Divisions when the IP Register is updated in the lead-up to the Budget – around March/April. A report of all the items shown in the Register as being of commercial value is reviewed by the Chief Finance Officer’s staff and if necessary, the area responsible for the management of the item is contacted with a view to establishing an appropriate valuation of the IP.

Staff are not required to provide an estimate of the value of an item unless requested to do so and if this is required, staff from Financial Services Division will provide assistance.

5 Managing and using intellectual property

This section deals with processes that will assist staff to manage IP. These processes relate to:

- copying other organisations' or individuals' IP;
- handling requests from organisations and members of the public to copy or otherwise 'use' the Department's IP;
- managing licences relating to purchased IP; and
- managing Departmental trademarks.

5.1 Reproducing and Communicating IP

5.1.1 What is 'copying'?

We commonly talk about 'copying' material. However, the Copyright Act refers to 'reproducing' and 'communicating', amongst other things. The table below illustrates the difference between 'reproducing' and 'communicating' with reference to actions that are commonly performed in the working environment.

Action	Legal description
Make a copy of a piece of copyright material using a photocopier or scanner	Reproduce
Download copyright material in electronic form from an intranet or from the internet	Reproduce
Print a document from the internet	Reproduce
Email a piece of copyright material	Communicate
Place a piece of copyright material on an intranet or on the Internet	Communicate

5.1.2 What can corporate staff reproduce and communicate?

Corporate staff can reproduce and communicate any copyright material providing that:

- it is covered by a licence held by the Department;
- it is permitted under licence from the copyright owner (eg, on a website copyright notice);
- a statutory exception applies; or
- permission has been obtained from the copyright owner.

5.1.3 The Departmental licences

Sections 183 and 183A of the Copyright Act license the Commonwealth, the States and the Territories to use copyright material for the services of government. This means that governments can use copyright material for government purposes without having to obtain the prior permission of the copyright owner.

Note: Government educational institutions – e.g. schools and TAFEs - are not able to rely on Sections 183 and 183A of the Copyright Act; there are separate educational statutory licences that apply to schools and TAFEs.

In practical terms, the Copyright Act allows government departments to reproduce or communicate copyright material – without any restrictions on the amount of material – without notifying the copyright owner. The cost of all such reproductions is covered by annual fees which the Department pays to organisations which have been declared to be the 'relevant collecting society' by the Copyright Tribunal.

Under the Copyright Act, there are two methods of fee payment. Payment may either be made by directly notifying the copyright owner of the use of the work, and paying the required fee, or by entering into agreements with relevant collecting societies that obviate the need for each use to be advised separately.

The Victorian government is currently negotiating agreements with the collecting societies. These agreements will be retrospective – meaning that they will cover any use that we make now in the period prior to the formal conclusion of the agreements.

Reproduction under the Departmental licences

Under the Departmental licences, staff will be able to do any of the acts of reproduction described in the table below without needing directly to advise the copyright owner (or the collecting society of which the owner is a member).

What corporate staff can do	Licence and Type of Work Covered	Relevant Collecting Agency
Reproduce any literary, dramatic, musical and artistic works (unless it's on a sound recording)	Print Licence: Covers literary, dramatic and artistic works published in hardcopy or electronic form	Copyright Agency Limited
Copy from radio or television broadcasts	Broadcast Licence: Covers audio-visual material broadcast on free-to-air and pay services	Screenrights
Publicly perform music	Licence for the Public Performance and Communication of Musical Works: Covers performance of musical and dramatic works	Australasian Performing Right Association (APRA)

Communication under the Departmental licences

At present *communication* – e.g. emailing copyright material, placing it on an intranet or the internet or distributing it to staff or the public - is not covered by the arrangements under Sections 183 and 183A of the Copyright Act. However, it is anticipated that this will also be covered when the agreements with the collecting societies are in place.

5.1.4 Permitted under licence from the copyright owner

A copyright owner may choose to make their material freely available for use, subject to certain terms and conditions. For example, websites will generally have terms of use. Those terms may expressly permit any use, educational use or use on certain terms. Importantly the terms of use will only apply to material on the website the copyright in which is owned by the website proprietor.

5.1.5 Statutory exceptions

The Copyright Act provides 'exceptions' which allow copyright material to be used in certain circumstances. The exceptions most commonly used are the fair dealing exceptions which allow any use of copyright material provided that use is fair and for the purpose of:

- research or study;
- criticism or review;
- reporting the news; or
- parody or satire.

Fair dealing exceptions – corporate staff

Generally, *individuals* can reproduce copyright material under the fair dealing exceptions. However, *Departmental staff* (non school-based) cannot rely on the 'research or study' fair-dealing exception when using copyright material for work-related purposes. It may be possible for staff to rely on the fair dealing exceptions relating to reporting the news, but the circumstances which would permit this would be unusual.

It would be advisable to seek advice from the Department's Copyright Officer before relying on the fair dealing exceptions.

Fair dealing exceptions – school staff

There are four commonly used exceptions in the Copyright Act that allow school staff to use copyright material for free.

- School staff can copy text and artistic works for inclusion in examinations for free.
- School staff can play audiovisual material or read text materials aloud in a classroom.
- School staff can communicate copyright materials for the sole purpose of classroom teaching (e.g. playing a DVD using a centralised player or showing a film to a distance education class using virtual classroom software).
- School staff might also be able to rely on the flexible use exception which allows some uses of copyright materials for teaching purposes where the use:
 - is for a special, narrow purpose; and
 - will not harm the copyright owner or conflict with the usual market for that copyright work (e.g. when a school could buy the work or would ordinarily obtain a licence for that use).

Fair dealing exceptions – students

Students can reproduce literary, dramatic, musical and audio-visual works under the fair dealing exception which allows this type of use for the purposes of research or study. However, there are also limits on the amount of a work that may be reproduced under the fair dealing exceptions. This is dealt with in more detail at <http://www.education.vic.gov.au/management/governance/copyright/schools/students.htm>.

5.1.6 Obtaining permission from the copyright owner

If you wish to reproduce or communicate copyright material and are uncertain whether it falls within the scope of the licence arrangements described above or within one of the exceptions, you should seek advice from the Department's [Copyright Officer](#) via the copyright mailbox at copyright@edumail.vic.gov.au.

If you need to obtain permission directly from the copyright owner, see the process [below](#).

5.2 Obtaining permission to use intellectual property

5.2.1 Circumstances when permission is required to use others' IP

As indicated above, you may need to seek permission to reproduce or communicate IP that is not owned by the Department if what you want to do is not covered by one of the Department's licences, another licence or a free exception.

If you wish to use something that:

- is not covered by the Department's copying licences;
- is not permitted under licence from the copyright owner;

- is not covered by a free exception; and
- in which copyright still subsists (see '[Duration of copyright](#)')

you will need to obtain permission or enter into a licence agreement.

5.2.2 Obtaining permission from a copyright owner

If you need to obtain permission directly from a copyright owner, the first step is to identify the copyright owner. The table below suggests how to go about this.

Type of material		Suggested approach
Text/written material	Published in books	<ol style="list-style-type: none"> 1. Contact the publishing organisation identified on the imprint page 2. The Copyright Agency Limited may be able to locate the copyright owner or grant a licence on their behalf: (http://www.copyright.com.au) 3. The Australian Society of Authors may be able to locate an author: (http://www.asauthors.org)
	Published in newspapers and magazines	<ol style="list-style-type: none"> 1. Contact the publishing organisation identified in the publication 2. To locate journalists and media photographers: Media & Arts Entertainment Alliance (http://www.alliance.org.au)
	Unpublished material	<ol style="list-style-type: none"> 1. Contact the creator directly – or their employer if the material was created as part of the creator's job
Plays and other dramatic works	<ol style="list-style-type: none"> 1. Contact the publisher for works that have been published 2. For other works, contact the creator directly. The Australian Writers' Guild may be able to locate writers: http://www.awg.com.au 3. If a work has been filmed, contact the film producer 	
Visual art, craft and photographs	<ol style="list-style-type: none"> 1. Contact the publisher for works that have been published 2. If a work is held in a gallery, the gallery administration should be able to locate the copyright owner 3. It may be possible to obtain a licence from VISCOPY, the visual artists collecting society: http://www.viscopy.com 	
Music and sound recordings <i>Note: These may have more than one copyright (e.g. the recording, the music score and the lyrics)</i>	<ol style="list-style-type: none"> 1. Contact the Australasian Mechanical Copyright Owners Society (AMCOS http://www.amcos.com.au) and the Australasian Performing Right Association (APRA http://www.apra.com.au) to locate the owners of the copyright in music. 2. Contact the record company regarding the copyright in the sound recording. If you don't know the name, the Phonographic Performance Company of Australia (PPCA http://www.pcca.com.au) or the Australian Record Industry Association (ARIA: http://www.aria.com.au) may be able to help. 	
Films, television programs, DVDs and videos	<ol style="list-style-type: none"> 1. Contact the producer or the production company. 2. Screenrights (the audio-visual copyright owners' collecting society: http://www.screenrights.org) may be able to assist to locate a copyright owner. 	
Computer software	<ol style="list-style-type: none"> 1. Contact the Business Software Association of Australia (BSAA: http://www.bsaa.com.au) to locate a software copyright owner if the contact details are not contained in the product, its label or packaging. 	

A copyright owner can process permission requests more readily if they receive all the information they need in the request. In particular, the copyright owner will need to know:

- exactly what part of the copyright material is to be used;

- precisely what use is to be made of the material; and
- the purpose for which the copies will be made.

A form letter which can be used as a starting point in drafting a request for permission can be downloaded from

<http://www.education.vic.gov.au/management/governance/copyright/resources.htm>.

5.3 Managing intellectual property licences

5.3.1 What is a licence?

A 'licence' is a legal mechanism used to grant rights to the licence holder for a period of time. It can be a formal agreement, it may be formed by an exchange of letters or it may be a statement of terms of use issued by the copyright owner.

When a copyright licence is granted, the copyright owner retains their ownership of the copyright.

Note: Granting a licence is quite different from 'assigning' copyright to another party. When copyright is assigned to another party, the copyright owner gives up all their interests and legal rights in the material. (It would be unusual for the Department to assign copyright to another party; if you are considering doing so other than in an ICT contract, advice should be sought from the Department's [Copyright Officer](mailto:copyright@edumail.vic.gov.au).at copyright@edumail.vic.gov.au)

As was mentioned in the section above dealing with [Copyright owner's rights](#), copyright owners have the right to grant licences to those who wish to:

- reproduce (copy) the work;
- perform the work in public;
- communicate the work to the public; or;
- make an adaptation of the work.

Payment of a licence fee may or may not be required.

5.3.2 Types of Licence

A licence may be exclusive, or non-exclusive.

Exclusive licence: This means that the copyright owner has agreed to provide the rights specified in the licence to one licence-holder only.

Non-exclusive licence: This means that that the copyright owner can grant the rights specified in the licence to others at any time.

Licences can also be categorised according to what the copyright owner is permitting. As was mentioned in the section above dealing with [Copyright owner's rights](#), copyright owners have the right to grant licences to those who wish to:

- reproduce (copy) the work;
- perform the work in public;
- communicate the work; or
- make an adaptation of the work

Licences can therefore allow any one or combination of these activities – e.g. 'reproduce and communicate' or 'adapt and perform'.

Licences can grant permission to use copyright material for any length of time. They also may be stated to be revocable or irrevocable, and to apply only in Australia or to apply worldwide (or in other specified countries).

5.3.3 Licences to use others' intellectual property

The Department purchases licences in order to gain access to intellectual property which is owned by other people or organisations. Some examples are where this is done to obtain access to:

- Computer software – e.g. purchase of licences to use the Microsoft Office software suite.
- Periodic publications and online resource centres – e.g. subscriptions to journals, law reports, on-line libraries.
- Essential references, such as the Australian Standards®.
- Others' copyright material which is to be included in Departmental publications, websites etc.

5.3.4 Obtaining licences to use others' intellectual property

Many licences are in a standard form, and acquiring these is a simple process of making a payment to the organisation issuing the licence. However, in some instances a 'one-off' licence may need to be negotiated. This would be necessary where something non-standard is required.

The steps to consider when obtaining a licence are shown below.

1. Check the [IP Register](#) to see if the Department already holds a licence to use the software/material.
2. Do you propose to procure or purchase a standard 'off-the-shelf' licence? If so, purchase using the normal purchasing processes.
3. Are you seeking a licence to use copyright material where it is likely that the copyright owner will grant permission without imposing a charge? If so, see the section dealing with [Obtaining permission to use others' IP](#) and use the form provided at <http://www.education.vic.gov.au/management/governance/copyright/resources.htm>.
4. Do you need a licence to cover a 'one-off' situation – in other words, a non-standard licence agreement where you will be required to negotiate the terms of the licence, record these in a licence agreement and pay an agreed fee? Generally, advice should be obtained before embarking on a negotiation of this kind:
 - For a software licence, the [Information and Technology Division](#) should be consulted.
 - For all other licences, the Department's [Copyright Officer](mailto:copyright@edumail.vic.gov.au) copyright@edumail.vic.gov.au should be consulted. The Copyright Officer may suggest that the matter needs to be handled by Legal Services Branch.
5. Once the licence has been obtained, the details of the licence need to be recorded in the Department's [IP Register](#).

5.3.5 Licences granted by the Department to others

The Department may also grant licences to others which allow those individuals or organisations to use the Department's intellectual property. See the section '[Authorising the use of the Department's intellectual property](#)' below.

5.3.6 Recording licences in the Department's IP Register

A few basic details about licences that have been purchased, obtained or granted need to be recorded in the Department's IP Register. See the section above dealing with the [IP Register](#) for more information.

5.4 Authorising the use of intellectual property

5.4.1 The policy on use of Departmental IP by others

This section is under review and has been removed from The Intellectual Property and Copyright Guidelines. For the current version refer to the Interim Copyright Permissions Guidelines located on the Department's website www.education.vic.gov.au.

5.5 Managing the Department's trade marks

5.5.1 What is a trade mark?

A trade mark can be a word, phrase or logo or a combination of these. It might also, depending on the circumstances, be a sound, smell or shape. To be a trade mark, it must distinguish the trade source of the goods or services. A registered trade mark gives you the legal right to use, license or sell the trade mark for the goods and services for which it is registered (within Australia). It also allows you to restrain others from using the trade mark (or any mark substantially identical or deceptively similar) in respect of those, or similar, goods and services. Trade marks are most commonly used to differentiate commercial enterprises from one another, but they can also have a role in non-commercial government activity.

Vic Roads has trademarked the "Thingle Toodle"



The main reason that a government department would register a word, phrase, logo or symbol (or a combination) as a trade mark is to ensure that the mark is not used by another party for commercial purposes. If a mark has become associated with the Department of Education and Early Childhood Development, its use by others could result in the public mistakenly thinking the products or services being promoted are those of the Department, or are endorsed by the Department.

The Department of Sustainability & Environment has trademarked "The Sustainables"



5.5.2 Registering a trademark

Trademarks are registered with a Federal government organisation called IP Australia. The IP Australia website contains detailed information on how to register a trademark (http://www.ipaustralia.gov.au/trademarks/process_index.shtml).

In brief, the steps in the process are:

- Conduct a search of existing trade marks to ensure that no existing trademark is being infringed;
- Lodge an application with IP Australia (either online or by mail);
- Receive notification that the trade mark is accepted for registration;
- The details of the application are advertised in the [Official Journal of Trade Marks](#);

- For three months after the advertisement date, anyone who believes that your trade mark should not be registered may oppose its registration;
- Payment of registration fee (if no opposition is filed against your application, or if opposition is unsuccessful);
- Receive from IP Australia a Certificate of Registration.

5.5.3 Recording a trade mark in the Department's IP Register

By its nature, a trade mark is likely to be of strategic or commercial value to the Department. All trade marks should be recorded in the Department's [IP Register](#).

5.5.4 Managing a trademark registration

If a trade mark is not used for a period of three years, an organisation or individual can make an application for removal from the Trade Marks Register. Usually, this is initiated by someone who cannot register their trade mark because of similarity to the existing registration.

Trademarks should be regularly reviewed to determine whether the registration needs to be maintained. For example, if the Department no longer uses the trade mark it may not be necessary to maintain its registration. However, if the trade mark is closely associated with the Department and it would not be desirable for another party to use it, then the registration should be maintained.

5.5.5 Trade mark infringement

In the event that someone uses a Departmental trade mark without your permission, they may be infringing the trade mark. Advice should be sought from Legal Services Branch as soon as possible after becoming aware of the unauthorised use.

6 Further Information

6.1 The Department's Copyright Officer

The Information Strategy Relationship Manager, Information Strategy Division is also the Department's Copyright Officer. The Copyright Officer is responsible for:

- Providing guidance and advice to schools and corporate staff on copyright issues;
- Managing the Department's statutory and voluntary licences, including:
 - estimating the Department's annual expenditure on copyright licences;
 - paying licence fees; and
 - liaising with the national bodies responsible for co-ordination of the educational licences.
- Liaising with central government agencies in relation to the Whole-of-Victorian-Government statutory and voluntary licences.

The Information Strategy Relationship Manager, Information Strategy Division can be contacted with copyright queries at copyright@edumail.vic.gov.au.

6.2 Computer Software Licensing is managed by the Information Technology Division

For all software licensing enquiries contact the Information Technology Division

6.3 Intellectual Property Legislation

IP legislation is administered by the Commonwealth Government. Relevant legislation includes the following:

Copyright Act 1968

Trade Marks Act 1995

Plant Breeder's Rights Act 1994

Patents Act 1990

Circuit Layouts Act 1989

Designs Act 2003

Commonwealth legislation can be found at: www.comlaw.gov.au

6.4 Internet References

DEECD Intellectual Property & Copyright Web Pages

<http://www.education.vic.gov.au/management/governance/copyright>

Smartcopying Website - The Official Guide to Copyright Issues for Australian Schools and TAFE <http://www.smartcopying.edu.au>