



Intellectual Property Policy

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V1.0	August 2016	Jen Franklin, Strategic Projects		Approved by EMG
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1 General information

The Museum of Australian Democracy at Old Parliament House (OPH) is committed to properly managing its intellectual property (IP) responsibilities. This policy describes the rules applying to the ownership, management, use, protection and disposal of rights to IP developed or used wholly or partially as a result of activities performed for or on behalf of OPH.

This policy, together with the procedures that sit below it, form OPH's IP framework. The responsibility for satisfying the requirements of this IP framework lies primarily with managers and the Intellectual Property Advisor but also requires diligent effort by all those involved in the IP process within OPH.

2 Objectives

2.1 The Australian Government's *Intellectual property principles for Commonwealth entities* states that "Commonwealth entities are responsible for managing IP in their control or custody in an effective, efficient and ethical manner". It further states that "The Government, through its entities, seeks to manage IP for the benefit of the Australian community as a whole." This policy aims to assist OPH in complying with these rules and principles.

2.2 In dealing with IP, OPH aims to:

- ensure it is not prevented from using collection items and other products in which IP subsists for OPH purposes
- facilitate access to collection items and other products
- foster and recognise research and scholarship
- protect OPH's brands and trademarks
- protect OPH's reputation
- avoid disputes that may damage OPH's reputation and give rise to legal liability.

3 Application

3.1 This policy applies to material Intellectual Property that OPH owns or licenses that:

- is recorded in, or otherwise subsists in materials recorded in, OPH's collection and record management databases
- is published by OPH
- is incorporated in, or is a component of, commercial off-the-shelf and non-commercial off-the-shelf software
- forms part of exhibition or program materials
- is used to promote OPH, its programs or activities (including in traditional and social media), or
- has been commissioned by OPH.

The above points apply unless such IP is assessed as giving rise to an insignificant risk that may lead to OPH not achieving the objectives above, in which case a formal risk assessment must be completed and approved.

3.2 This policy applies to:

- all Employees and Contractor Personnel of OPH
- visiting research fellows, students, donors, vendors, lenders, borrowers and any other third-party contractors to the extent that this policy is invoked to apply to them.

OPH has a designated IP Advisor to oversee the administrative processes related to IP within the agency. The implementation of this policy is the responsibility of all managers.

4 Awareness

4.1 The team managers will:

- establish and maintain IP awareness initiatives that are relevant for their areas in accordance with any IP procedures developed under this policy
- liaise with other areas to ensure IP awareness initiatives are established and maintained effectively.

4.2 The resourcing applied to IP awareness initiatives will take into account the benefits, risks and valuation of IP held by OPH.

5 Creation of IP

5.1 OPH will identify any material IP that may have been created within OPH arising from the performance of its functions and activities.

5.2 Recording of IP

- All material IP created, acquired or disposed of by OPH should be recorded by the IP Officer undertaking the action as soon as practically possible.
- All OPH personnel should provide the relevant IP officer sufficient information as is necessary to enable OPH to manage the IP that it holds.
- All material IP will be recorded in a manner that best enables OPH to manage the material risks to its operations and efficiently and effectively manage its resources.

5.3 Procedures developed under this policy will describe systems to identify and record material IP. Details to be recorded will include:

- ownership of IP
- rights associated with the ownership and use of IP
- restrictions on OPH or other parties in relation to the use of IP
- costs associated with the use of IP
- licence period if applicable.

5.4 OPH IP Officers are required to:

- keep records of material IP in relation to the activities of their teams (including information recorded on the IP register) accurate and up-to-date.
- retain copies of all documents associated with the creation, use, management and handling of material IP in accordance with IP procedures and record keeping standards.

6 Assessing and valuing IP

6.1 OPH will periodically review its IP to assess which of that IP is 'material IP' as defined in this policy.

6.2 Valuation of IP

- The agency will value its IP when appropriate for internal risk and asset management purposes.
- The method for valuing IP must be in accordance with the applicable accounting standards or otherwise consistent with the purpose of the IP which is being valued.

7 Ownership of IP created within OPH

7.1 IP created by an Employee of OPH in the course of their employment or otherwise created under the direction or control of OPH is owned by the OPH.

7.2 IP created by Contractor Personnel in the course of their engagement or otherwise created under the direction or control of the OPH is agency is owned by OPH.

7.3 IP created by visiting personnel, including volunteers, in the course of exercising their 'visitor privilege' or otherwise created under the direction or control of the agency should be owned by the agency.

7.4 Exceptions to 7.1 – 7.3 may be made provided that such an arrangement is approved in writing by the Deputy Director OPH.

7.5 In dealing with IP created by Employees, Contractor Personnel, visiting personnel or volunteers, OPH will consider appropriate forms of acknowledgement and recognition for the creation of material IP under its direction or control, in accordance with any applicable IP procedures.

8 Acquisition of IP from outside the OPH

8.1 In accordance with the Intellectual property principles for Commonwealth entities, OPH will maintain a flexible approach in considering options for ownership, management and use of IP. OPH will consider its needs before determining whether it should own IP created by another person or organisation.

8.2 In determining the most appropriate model for ownership, management and use of IP consideration should be given to:

- the objectives of the activities
- opportunities for obtaining appropriate value in all IP arrangements
- opportunities for financial savings in procurement contracts through obtaining only those IP rights required to meet the objectives of the procurement
- the costs of managing and administering IP assets retained by OPH and the potential for some IP assets to rapidly decline in value
- the desirability of making IP available to entities that are able to use Government IP to create jobs and commercial opportunities.

9 Software

9.1 In respect of software contracts, OPH follows the Commonwealth's default position in favour of the supplier owning the IP in software developed under a procurement contract except under exceptional circumstances (see 4.17). This ownership position is conditional on the supplier granting the Commonwealth a perpetual, irrevocable, world-wide (if required), royalty free, fully paid up licence to all rights normally accompanying IP ownership (including the right to sub-license but excluding a right of commercial exploitation) in the develop IP for government activities.

9.2 Exceptional circumstances that would lead to OPH choosing to own IP emanating from software or other IT contracts include, for example:

- where the IP includes personal information
- where the main purpose of the IT contract and the developed IP is to generate knowledge and information for public dissemination or OPH intends to allow free use of the IP on open-source terms
- reasons in the public interest economic and financial risks

9.3 OPH will identify and address its IP requirements as part of the procurement and acquisition process. Standard forms and contract clauses relating to IP should not be amended unless specified to do so. The Commonwealth Contracting Suite (CCS) or Digital Transformation Agency (DTA) documentation should be used where appropriate.

10 Protection of IP

10.1 OPH should seek to formally protect its IP if:

- such protection will better enable OPH to manage its risks, is value for money and/or will enable OPH to achieve its IP related objectives
- OPH has the resources to manage the protected IP on an ongoing basis
- OPH has obtained expert advice regarding the protection.

11 Use of another person's IP

11.1 OPH's use of IP owned by another person:

- must be consistent with the legal rights granted or otherwise available to OPH
- must be undertaken in accordance with any relevant IP procedures
- must be undertaken in an efficient and ethical manner, and respect the cultural traditions of Indigenous communities where applicable
- should be consistent with the needs analysis undertaken by OPH including using the IP to carry out its functions
- should be consistent with any relevant industry standards or policies
- should respect the creator's moral rights in a manner that is consistent with the Copyright Act 1968
- should be recorded in the IP register
- should be supported by appropriate documentation including contracts.

11.2 The fees or costs paid by the agency to use another person's IP should:

- represent value for money
- be determined in accordance with the Commonwealth Procurement Rules

12 Use of OPH's IP

12.1 OPH will permit other persons to use the agency's IP if such use:

- is consistent with the agency's strategic plan
- respects the creator's moral rights in a manner that is consistent with the *Copyright Act 1968*.

12.2 The use of OPH's IP by another person must be supported by appropriate documentation and recorded in the IP register.

12.3 May incur a fee as decided on a case-by-case basis.

12.4 OPH will encourage public use of and easy access to copyright material that has been published for the purpose of:

- informing the public of OPH's activities
- facilitating access to the collection
- delivering outreach programs in accordance with OPH functions.

12.5 Granting permission for public use is to be on the following basis:

- permission for public use and re-use of such material should generally be given on a non-exclusive basis, through notices on the OPH website where appropriate
- exclusive license to use such materials should only be given in exceptional circumstances and with the written approval of the Deputy Director.

12.6 OPH will consider opportunities to share IP with other government agencies and if this is the intention at the time of procurement will make this clear to potential suppliers during the procurement process.

12.7 With regard to Public Sector Information, e.g. information published to comply with public accountability requirements, OPH's starting point when determining how to licence this information is to consider [Creative Commons licences](#) or other open content licences. The decision on whether OPH should publish its Public Sector Information under a Creative Commons or other open content licence must be done with due diligence and on a case-by-case basis.

12.8 Before releasing Public Sector Information for which OPH is not the sole copyright owner, under a Creative Commons BY standard or another open-source content licence, OPH may need to negotiate with any other copyright owners of the material.

13 Record of rights and obligations

13.1 OPH will record the rights and obligations of rights in material IP that it acquires and grants.

14 The OPH brand

14.1 The use of the OPH and Museum of Australian Democracy (MoAD) brand (including logo) have been trademarked and must be used in accordance with the OPH style guide and

IP procedures. Any use of the OPH brand that does not comply with this requirement must have prior written approval of the Deputy Director.

15 Commercialisation

15.1 OPH may seek revenue in return for IP held by the agency used for, but not limited to, publishing, merchandising and sponsorship.

15.2 With respect to the commercialisation of IP, OPH will:

- act consistently with industry and market practice for a national cultural institution
- be responsive to opportunities in the private sector
- conduct such activities in accordance with the strategic plan and IP procedures
- act in an accountable manner
- ensure competition is not adversely affected by abuse of any commercial advantage arising from public IP ownership and/or the transfer of IP to the private sector that restricts competition.

Any decision to commercialise the agency IP must be with the written approval of the Deputy Director.

16 IP Infringement

16.1 OPH will manage the risk of infringing another person's IP by:

- establishing and maintaining an IP Register.
- establishing and maintaining an IP awareness program and regularly reviewing IP Procedures.
- taking preventive steps to avoid infringing IP before:
 - implementing a new program
 - publishing
 - adopting a new logo or brand
 - procuring new goods or services
 - developing new products.
- notifying immediately the IP Advisor to manage the claim in accordance with commonwealth guidelines and notify Comcover if there is a discovery or claim of IP infringement
- seeking expert legal and other professional advice where necessary.

16.2 If OPH discovers or receives notification that OPH's IP may have been infringed it will manage such a claim by:

- notifying the IP Advisor to manage the claim in accordance with Commonwealth guidelines
- notifying Comcover
- seeking expert legal and other professional advice where necessary.

17 Disposal of the OPH IP

17.1 Material IP of the agency should only be assigned or otherwise disposed of if:

- it is no longer necessary to enable OPH to perform its functions or to achieve its IP related objectives
- another person is better placed to utilise the IP and ownership by that person of the IP will not adversely affect OPH.

17.2 OPH must consider any ongoing rights in the IP that it may require before disposing that IP.

17.3 All disposals of material IP owned by the agency must be recorded in the IP register and in accordance with recordkeeping standards.

17.4 In disposing of IP or any records relating to it, the agency will manage the activity in accordance with

- applicable agency procedures, including asset management
- the Archives Act 1983
- any contractual restrictions relating to the IP
- other legal requirements

18 Definitions

Contractor Personnel – OPH workers employed under an individual contract or through a labour hire firm

Employee – any one employed by OPH under the Public Service Act 1999 (Cth)

Intellectual property (IP) - All intellectual property rights, including but not limited to:

- Patents, copyright, designs, trademarks and domain names
- Any application or right to apply for registration of any of the rights referred to above
- All rights of a similar nature to any of those referred to above
- whether or not such rights are registered or capable of being registered.

IP Advisor – First point-of-contact for inquiries internal and external relating to IP, see below.

IP Officer – The team member designated to maintain IP records

IP Procedures – Any procedures that are developed under this policy to implement this policy.

IP Register – A register established and maintained to implement this policy.

Material IP – Any IP which meets one or more of the criteria listed in 3.1 of this policy.

Public Sector Information – Any material that is published for the purpose of:

- Informing and advising the public of government policies and activities
- Providing information that will enable the public and organisations to understand their own obligations and responsibilities to government
- Enabling the public and organisations to understand their entitlements to government assistance
- Facilitating access to government services or
- Complying with public accountability requirements.

19 Responsibilities

OPH has designated the following officers to administer processes related to IP within the OPH.

Deputy Director – Overall application of this policy and implementation of the procedures developed under this policy and approvals required in accordance with this policy

Head, Finance and Business – Agency adoption of this policy.

Section Heads and team managers – Implementation of this policy and the procedures developed under this policy.

IP and Risk Advisor - first point-of-contact for any IP inquiries.

Finance Manager – Contracts advisor.

All staff – Assistance to their team managers to keep Material IP records up to date and accurate.

20 References

Intellectual property principles for Commonwealth entities June 2018

<https://www.communications.gov.au/documents/intellectual-property-principles-commonwealth-entities> (downloaded 28 May 2021)

Intellectual property principles for Commonwealth entities June 2018

<https://www.communications.gov.au/documents/intellectual-property-principles-commonwealth-entities> (downloaded 28 May 2021)

Australian Government intellectual property manual June 2018

<https://www.communications.gov.au/documents/australian-government-intellectual-property-manual-0> (downloaded 28 May 2021)

Guidelines on licensing public sector information for Australian Government entities

<https://www.communications.gov.au/documents/guidelines-licensing-public-sector-information-australian-government-entities> (downloaded 29 June 2021)

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<https://www.nma.gov.au/about/corporate/plans-policies/policies/intellectual-property>
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Management of Intellectual Property: Final Report, prepared by Synergy, April 2021

MoAD Intellectual Property Management Policy, prepared by Ashurst Australia, June 2012