



Department of  
**Education**

# **Intellectual Property Procedures**

Effective date: 4 June 2024

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These procedures must be read in conjunction with the Intellectual Property Policy.

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These procedures must be read in conjunction with the [Intellectual Property Policy](#).

## 1. Policy supported

[Intellectual Property Policy](#)

## 2. Scope

This policy applies to all employees.

## 3. Procedures

### 3.1 Marking of intellectual property

Employees must mark all Department and school publications and resources with ownership and copyright information appropriate for the work in question.

#### Guidance

Copyright automatically protects a creative work upon its creation. Marking or labelling Department publications reminds others that the material is protected and may require permission for some uses. Department staff are generally free to reuse Department resources for the purposes of their business unit or school, subject to 3.3 of these procedures.

For instructions on how to mark Department intellectual property refer to [Add copyright ownership and licensing information to publications and resources](#) in Ikon (staff only).

Note: Third party materials copied by teachers for educating students in class under statutory or voluntary education licences should not be labelled as Department or school intellectual property. For more information about using intellectual property in schools refer to [Use copyright materials in schools in Ikon](#) (staff only).

### 3.2 Securing of Department intellectual property by employees ceasing employment

When ceasing employment with the Department an employee must secure for the Department any intellectual property in the employee's control and/or possession.

After ceasing employment with the Department, an employee must not use, remove, copy and/or disclose any of the Department's intellectual property.

### **Guidance**

Before ceasing employment, employees can secure Department intellectual property in their possession or control and make it available for the Department's continued use by depositing copies of materials and resources into relevant Department and school record repositories and by providing copies to their line manager.

After ceasing employment with the Department an employee can only use Department intellectual property in accordance with the provisions of the Copyright Act. Employees who wish to keep a copy of materials they have worked on for personal reference purposes must apply to the Director General for permission (Refer to 3.4.1 of these procedures for more information).

## **3.3 Use of Department intellectual property by employees for internal Department purposes**

An employee from one Department business area who wants to use intellectual property originating from another business area for Department purposes must consider whether the new purpose is appropriate for the intellectual property and if in doubt confirm with the originating business area before proceeding.

### **Guidance**

Intellectual property created by one Department business unit or school may not always be suitable for use, repurposing, or publication by another business unit or school. For example, where materials contain third party content, the permissions relating to that content may not extend to the intended new use by another business unit. Contact the authoring business unit or school to ensure no restrictions or conditions of use apply to the intellectual property before using it.

## **3.4 Use of intellectual property by employees for external purposes**

### **3.4.1 Distributing Department intellectual property**

Employees who want to use or distribute intellectual property belonging to the Department for a purpose outside the Department must receive the Director General's approval in writing before proceeding.

### **Guidance**

Examples of when employees are required to apply for Director General permission if they wish to use Department intellectual property include intellectual property:

- created in the course of their employment as the basis for developing new intellectual property in a private capacity (for example, a software app, website, textbook, game or curriculum resource);
- to be incorporated into research undertaken within the Department but as part of the employee's formal study with an external education provider; or
- created in the course of their employment for personal reference purposes when ceasing employment with the Department.

For a template letter to use to apply for permission refer to [Share Department-owned intellectual property or resources](#) in Ikon (staff only).

### 3.4.2 Using Department intellectual property for research purposes

Employees undertaking research as part of formal study, which may include intellectual property used during their employee functions or responsibilities, must clarify requirements with their line managers.

#### Guidance

Research undertaken on Department sites by employees for purposes of formal study with an external education provider is subject to the policy, [Research Conducted on Department of Education Sites by External Parties](#), which includes a formal application.

Employees wishing to incorporate Department intellectual property into research outcomes related to formal study with an external education provider may do so in accordance with 3.4.1 of these procedures.

### 3.4.3 Using Department intellectual property for outside employment or other duties connected with an outside business

Employees wishing to create and/or use intellectual property for outside paid employment (or duties connected with any commercial business) must have prior written approval from the Department in accordance with Section 102 of the Public Sector Management Act.

Employees must seek advice from the [Principal Consultant Intellectual Property and Copyright](#) regarding the external use of any intellectual property before applying for permission for outside employment to confirm intended activities do not conflict with this policy.

#### Guidance

Section 102 of the Public Sector Management Act 1994 requires prior written permission from the

Department to engage in outside paid employment and/or discharge duties in connection with any commercial business (for example, running a business). This includes using intellectual property created outside of normal work hours that is not related to employment duties with the Department, and applies whether it is Department intellectual property or intellectual property created in a private capacity that is being used.

To apply for approval for outside employment refer to [Seek approval for outside employment](#) in Ikon (staff only).

For more information about how creating intellectual property outside of your duties with the Department affects you refer to [Understand your responsibilities if you create resources in a private capacity](#) in Ikon (staff only).

### 3.5 Use of Department intellectual property by an external entity

Employees must seek advice from the [Principal Consultant, Intellectual Property and Copyright](#) before they distribute, assign, or sell Department intellectual property to an external entity, or if they receive a request from an external entity to use Department intellectual property.

#### Guidance

The [Principal Consultant Intellectual Property and Copyright](#) will assess any proposal to distribute, assign or sell Department intellectual property, for the need for Director General approval and advise regarding licensing requirements for its use by an external entity.

For a template letter to use to request approval refer to [Share Department-owned intellectual property or resources](#) in Ikon (staff only).

### 3.6 Creation of Department intellectual property by an external entity

Employees must confirm that a written contract is in place detailing intellectual property ownership and licensing arrangements before external entities, including individuals, are involved in arrangements that create, or are likely to create, intellectual property for the Department.

#### Guidance

Agreements covering the employment of external consultants to develop curriculum materials, deliver professional learning packages, or provide other services that generate intellectual property for the Department, must contain provisions that assign intellectual property to the Department or contain appropriate licensing provisions that allow the Department to control the intellectual property for its

purposes.

For guidance on ensuring contracts contain appropriate intellectual property terms and conditions refer to [Get commercial legal advice about contracts and agreements](#) in Ikon (staff only).

### 3.7 Student intellectual property

Employees must obtain written consent from the student and their parent/guardian before publishing or distributing by any means any student work.

#### Guidance

Students own the intellectual property in their work.

For a template consent form to request permission to use student work refer to [Use student work and images](#) in Ikon (staff only).

### 3.8 Use of third party intellectual property by employees

Line Managers must verify that all third party intellectual property used in all Department publications, resources, and documents, including school administration and promotional materials, has all necessary copyright permissions secured prior to distribution.

Employees must:

- ensure permissions have been gained prior to using, modifying and repurposing any third party work
- consider and manage moral rights requirements in any third party material
- attribute all third party material incorporated into Department works
- secure all records relating to third party copyright permissions in the Department's record management system.

#### Guidance

For information on how to secure copyright permissions, including a request letter template, refer to [Get permission to use the materials](#) in Ikon (staff only).

For information about moral rights requirements refer to [Consider moral rights obligations](#) in Ikon (staff only).

For information about how to acknowledge materials you use refer to [Acknowledge the materials you use](#) in Ikon (staff only).

For instructions and examples of how to complete a copyright register refer to [Complete a copyright register](#) in Ikon (staff only).

School staff using third party intellectual property for the purpose of educating their students can reproduce works in accordance with permitted uses under the Copyright Act 1968 and the statutory and voluntary licence agreements already in place. For details refer to [Use copyright materials in schools](#) in Ikon (staff only).

### 3.9 Use of aboriginal cultural and intellectual property

Employees must:

- take into consideration the views, knowledge and sensitivities of the Aboriginal community concerning the use of Aboriginal cultural and intellectual property; and
- consult and gain agreement with relevant Aboriginal communities, groups and representatives governing the ownership, use and sharing of Aboriginal cultural and intellectual property

before an event or project is commenced and resources are developed and used by the Department.

#### Guidance

For details of the kinds of considerations and undertakings required refer to [Consult before using Aboriginal cultural and intellectual property](#) in Ikon (staff only)

## 4. Definitions

### Copyright



Rights granted to the creator or copyright owner of an original work and include exclusive rights over the use, reproduction and distribution of that work. Copyright protects only the material expression of ideas not the ideas themselves.

Copyright protection is provided automatically when a work is created and no registration is required. Copyright covers the following works and materials in any hardcopy, analogue or electronic form:

- literary, dramatic and musical works;
- artistic works, including drawings, paintings, sculptures, photographs, logos, architectural designs, maps;
- sound recordings including recorded music, soundtracks;
- films, videos, podcasts, webinars and broadcasts; and
- published editions of literary, dramatic, musical, and artistic works.

## **Employee**

A person who is currently employed by the Department of Education under the School Education Act 1999 or the Public Sector Management Act 1994.

## **Intellectual property**

The term given to a range of legal and moral rights that protect creations of the mind and creative effort and include literary and artistic creations, scientific and industrial works, and discoveries, and encompasses copyright, patents, industrial designs, trademarks, and plant breeding rights. Intellectual property, like any other form of property (such as land and goods) can be bought, sold, and licensed.

## **Moral rights**

Moral rights are associated with an author's creativity and personality. Moral rights are granted to authors of literary, dramatic, musical, and artistic works, and films, and include:

- The right of attribution of authorship: the author has the right to be identified as the author of the work;
- The right against false attribution of authorship: the author has the right not to have his or her work attributed falsely to someone else; and
- The right of integrity of authorship: the author has the right to have the integrity of their work respected and not subjected to derogatory treatment.

### **Statutory licence**

A licence provided by legislation. It enables a school to copy limited amounts of copyright material for the purposes of a course of education provided by it. Copyright Agency Limited and Screenrights administer these statutory licences for schools.

### **Third party intellectual property**

Any intellectual property owned by someone other than the Department.

### **Voluntary licence**

A licence which is not provided by legislation, but is purchased by the Department, for example, the Music Licence Agreement that enables the use of certain musical works, sound recordings and print music in schools.

### **Works**

The output of a writer, artist, or musician considered or collected as a whole which can include, but is not limited to, the following categories:

- literary works;
- artistic works;
- musical works; and
- dramatic works.

## 5. Related documents

### Relevant legislation or authority

[Copyright Act 1968 \(Cth\)](#)

[Designs Act 2003 \(Cth\)](#)

[Patents Act 1990 \(Cth\)](#)

[Public Sector Management Act 1994 \(WA\)](#)

[School Education Act 1999 \(WA\)](#)

[Trade Marks Act 1995 \(Cth\)](#)

### Related Department documents

[Records Management](#)

[Research Conducted on Department of Education Sites by External Parties](#)

[Software Use](#)

[Students Online in Public Schools](#)

[Telecommunications Use](#)

### Other documents

[Find information about your copyright and intellectual property obligations \(staff only\)](#)

[Code of Conduct and Standards \(staff only\)](#)

[Western Australian Government Intellectual Property Policy 2015](#)

[National Copyright Guidelines](#)

[Manage records at your school \(staff only\)](#)

## 6. Contact information

### **Policy manager:**

Manager, Projects and Initiatives

### **Policy contact officer:**

Principal Consultant, Intellectual Property and Copyright Projects and Initiatives

T: (08) 9264 4058

E: [copyright@education.wa.edu.au](mailto:copyright@education.wa.edu.au)

W: [Find information about your copyright and intellectual property obligations \(staff only\)](#)

## 7. History of changes

<b>Effective date</b>	11 June 2014
<b>Last update date</b> <b>Procedure version no.</b>	1.0
<b>Notes</b>	Endorsed by the Director General at Corporate Executive meeting 2 May 2014.
<b>Effective date</b>	11 June 2014
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<b>Procedure version no.</b>	1.2
<b>Notes</b>	Replaced manager position, reference to TRIM and contact information. Removed sentence in Guidance under Section 3.6.3. D15/0326946
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<b>Last update date</b> <b>Procedure version no.</b>	2.0
<b>Notes</b>	Major review undertaken. Endorsed by the Director General on 27 October 2023 D23/0068247

## 8. More information

### Supporting content

#### Policy

[Intellectual Property Policy](#)

#### Future policy

[Intellectual Property Policy and Procedures EFFECTIVE 4 June 2024](#)

### Procedure review date

4 June 2024

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