



Department of
Education

Intellectual Property Policy

Effective date: 4 June 2024

Version: 2.0

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An updated version of this policy is pending.

1. Policy statement

The Department of Education (the Department) requires all employees to manage intellectual property created and used in the course of their employment in accordance with Western Australian Government mandates, governing legislation including the Western Australian Government Intellectual Property Policy, and the operational requirements of the Department.

2. Policy rules

Employees must:

- safeguard Department intellectual property
- ensure their legal obligations are fulfilled when using third party intellectual property
- comply with the Intellectual Property Procedures.

Guidance

Examples of Department intellectual property

Department intellectual property includes, but is not limited to, guidelines, instructions, books, policies, reports, research papers, content on CDs, DVDs, film, video, webpages, social media posts, original teaching resources, educational programs, assessments, school policies and plans; in hardcopy or electronic form.

Ownership

Under the Copyright Act 1968, the Department (as the employer) owns the copyright in material created by its employees in the course of their duties unless otherwise agreed between the Department and employee.

Where the nature of employment duties results in Department employees working outside normal work hours, any intellectual property created that relates to those duties will be owned by the Department.

It is not so much the 'when and where' that determines the rights but the nature of the employment duties and whether the intellectual property in question is related to those duties.

An employee creating intellectual property outside of normal work hours, that is not related to their employment duties with the Department, retains the copyright.

Moral rights and attribution of authorship

The Copyright Act provides that it will not be an infringement of an author's moral rights if it was reasonable in all the circumstances not to attribute the author. The matters to be taken into account in making a determination include:

- the nature of the work
- the purpose for which the work is used
- the manner in which the work is used
- the context in which the work is used
- any practice, in the industry in which the work is used, that is relevant to the work or the use of the work
- whether the work was made in the course of the author's employment.

The Department as employer is generally entitled to determine whether to publish a work, alter a work, or attribute a work created by an employee in the normal course of their employment with the Department. In most organisations it would be impossible for the employer to observe a moral right of an employed author, as it would involve detailed assessment of the history of every work created, and dialogue with every contributor to that work.

Employees who wish to claim their moral rights should address their reasons in writing to their line manager.

The Department may recognise outstanding or extraordinary work of an employee by acknowledging their authorship of a work, however this is not recognition of moral rights unless the work is subject to an agreement in writing detailing moral rights.

3. Responsibility for implementation and compliance

Implementation of the policy is the responsibility of line managers.

Compliance monitoring is the responsibility of the Manager, Projects and Initiatives.

4. Scope

This policy applies to all employees.

5. Supporting procedures

Intellectual Property Procedures

6. 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
- published editions of literary, dramatic, musical, and artistic works.

Department intellectual property

Intellectual property owned by the Department.

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
- 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.

Third party intellectual property

Any intellectual property owned by someone other than the Department.

Works

The material output of a writer, artist, musician, technician, or other creator which can include, but is not limited to, the following categories:

- literary works
- artistic works
- musical works
- dramatic works
- sound recordings
- cinematograph films and video.

7. 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 policy

[Records Management](#)

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

[Software Use](#)

[Students Online in Public Schools](#)

[Telecommunications Use](#)

Other documents

[Understand your copyright and intellectual property obligations \(staff only\)](#)

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

[Government Intellectual Property Policy 2015](#)

[National Copyright Guidelines](#)

[Management records at your schools \(staff only\)](#)

8. 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

W: [Understand your copyright and intellectual property obligations](#) (staff only)

9. History of changes

Effective date	11 June 2014
Last update date Policy version no.	1.0
Notes	Endorsed by the Director General at Corporate Executive meeting 2 May 2014.

Effective date	11 June 2014
Last update date	25 January 2015
Policy version no.	1.1
Notes	Contact email updated D15/0027727

Effective date	11 June 2014
Last update date	6 October 2015
Policy version no.	1.2
Notes	Compliance monitoring role and contact information updated. D15/0326946

Effective date	4 June 2024
Last update date Policy version no.	2.0
Notes	Major review undertaken. Endorsed by the Director General on 27 October 2023 D23/0068247

10. More information

Supporting content

Procedure

[Intellectual Property Procedures](#)

Future policy

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

Policy review date

4 June 2024
