



# Intellectual Property Management Policy

## 1. Authority

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State Librarian and Chief Executive Officer

## 2. Policy Statement

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Intellectual property (IP) refers to creations or knowledge resulting from intellectual efforts. IP gives the owner the right to decide how others can use the creations. State Library is both a creator and user of IP in the fulfilment of its vision - Inspiring possibilities through knowledge, stories and creativity. This policy provides guidance and accountability for State Library in the management of IP.

## 3. Purpose

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The purpose of the Intellectual Property Management Policy is to outline how State Library of Queensland (State Library) manages

- IP that it creates and/or owns
- the use by SLQ of IP owned by third parties.

## 4. Scope

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The policy focuses on copyright and moral rights as these are the areas of intellectual property law most relevant to the Library: other areas that may require consideration include trademarks and design, and the collective rights of Indigenous communities. The policy applies to all employees, contractors and volunteers.

## 5. Definitions

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Word	Definition
<b>Copyright</b>	Copyright legally protects the original expression of ideas in: <ul style="list-style-type: none"><li>- literary works (textual material, computer programs, compilations etc)</li><li>- artistic, dramatic or musical works</li><li>- cinematograph films</li><li>- sound recordings</li><li>- broadcasts and</li><li>- published editions</li></ul> from being treated in certain ways (for example, reproduced or published) without the copyright owner's permission. Copyright is one form of IP, and is the type of IP most often handled or owned by public sector agencies. Copyright is transferable.
<b>Creative commons</b>	Creative Commons (CC) licences apply alongside existing copyright. There are six sets of CC licence conditions that a creator can choose to apply to any work to free up private

Word	Definition
<b>(CC) licensing</b>	rights for public use. Use of CC licences is particularly prevalent in works which incorporate digital and evolving technologies.
<b>Fair dealing</b>	The <i>Copyright Act 1968</i> (Cth.) specifies circumstances under which the use of copyright material is considered a 'fair dealing': criticism or review reporting the news parody or satire. Copying for research or study is also 'fair dealing' if the copy constitutes a 'reasonable portion' of the work. Currently a 'reasonable portion' means no more than 10%, or one chapter, of a literary dramatic or musical work published in an edition of more than 10 pages.
<b>Intellectual Property (IP)</b>	Intellectual Property (IP) covers the wide range of intangible property that is the result of investment in the creative and intellectual effort of individuals and organisations. Types of IP include: <ul style="list-style-type: none"> <li>- <i>copyright and related rights, including moral rights</i>, in relation, for example, to manuals, publications, educational resources, databases, digitised material, software, training programs costing over \$100,000, manuscripts, information sheets, industry profiles, position papers, policies and guidelines</li> <li>- <i>patents</i>, for new or improved products, services or processes</li> <li>- <i>trademarks</i> which protect brand names and business, company, or domain names</li> <li>- <i>designs</i>, for the shape or appearance of manufactured goods such as the design for a product (a chair, for example)</li> <li>- <i>circuit layout rights</i>, relating to the three-dimensional configuration of electronic circuits, and layout designs for computer chips</li> <li>- <i>plant breeder's rights</i>, in relation to a new plant variety, for example, and</li> <li>- <i>trade secrets and confidential information</i>.</li> </ul> IP does not include outputs of a purely administrative nature such as letters, briefings, memorandums and forms, or intellectual capital not embodied in a tangible output such as a practice manual or guideline. The term 'IP assets' is used to refer to the pieces of work in which IP resides.
<b>Moral rights</b>	Moral rights relate to an individual creator's reputation in connection with his or her copyright work. They are additional to, and separate from, the 'economic rights' associated with the work, such as the right to reproduce it. A creator will retain moral rights in his or her work even if copyright in that work is owned by someone else moral rights cannot be transferred. Moral rights entitle a creator to: <ul style="list-style-type: none"> <li>- be attributed as the creator of their work</li> <li>- not have their work falsely attributed to someone else and</li> <li>- not have their work treated in a derogatory way – for example, by distorting or otherwise modifying it.<sup>1</sup></li> </ul>
<b>Orphan work</b>	Material where the copyright holder can either not be identified or cannot be located.
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<b>Employee</b>	An 'employee' includes volunteers, work experience students, casual staff and anyone employed in any other capacity. An 'employee', however, does not include contractors or consultants.
<b>Contractor</b>	Contractors differ from employees because they are engaged under a different set of legal arrangements, for example: taxation, superannuation and workers' compensation. A consultant is a particular type of contractor (see below)  Most providers of services are categorised as contractors for Queensland Government reporting purposes. There are generally two types of contractors: <ul style="list-style-type: none"> <li>▪ contractors for non-professional services, which include trade service providers (plumbers, carpenters, electricians and painters), cleaning services and temporary staff who are engaged to provide office services (including data entry, administration etc.)</li> <li>▪ contractors for professional services.</li> </ul>

<sup>1</sup> *Information sheet G43v14 Moral Rights*, Australian Copyright Council, 2014.

Word	Definition
	<p>This second type of contractor is generally where confusion may occur when categorising consultants and contractors. A contractor implements an existing process to deliver a known product/outcome.</p> <p>Examples of contractors for professional services include:</p> <ul style="list-style-type: none"> <li>▪ key note speakers, workshop facilitators, trainers, presenters</li> <li>▪ IT programmers, software development and implementation, analysts and system support staff</li> <li>▪ market researchers, organisations compiling statistical data</li> <li>▪ design, conceptual design services provided by creative design houses, public relations companies etc.<sup>2</sup></li> </ul>
<b>Consultant</b>	<p>For Queensland Government reporting purposes, a service provider can be categorised as a consultant if all of the following apply:</p> <ul style="list-style-type: none"> <li>▪ provides expert knowledge to analyse information, draw conclusions and make recommendations in the form of a written report or an intellectual product for future action, which the agency must then decide upon or take a certain course of action</li> <li>▪ the nature of the output is not necessarily predictable, but tends to be open ended and is more complex (for example, a range of recommendations which the agency must consider)</li> <li>▪ develops a new concept or process and where the agency requires critical judgement to consider the recommended course of action</li> <li>▪ is engaged for a fixed period of time at an agreed payment rate</li> <li>▪ work is not directly supervised by the agency.<sup>3</sup></li> </ul>
<b>Non-Current Asset Policies for the Queensland Public Service (NCAP)</b>	<ul style="list-style-type: none"> <li>• A suite of policies covering the recognition and treatment of non-current assets by the Queensland Public Service</li> <li>• NCAP 1 sets the minimum recognition threshold for Intellectual Property assets at \$100,000</li> <li>• Intellectual Property assets are recognised “at cost” and revalued as per AASB 138</li> </ul>
<b>IP Assets</b>	<ul style="list-style-type: none"> <li>• valued at \$100,000 or more</li> <li>• is separable, that is, is capable of being separated or divided from the entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, asset or liability</li> <li>• arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.</li> <li>• An intangible asset is recognised only if it is probable that the future economic benefits attributable to the asset will flow to the organisation and its cost can be measured reliably</li> </ul>
<b>Other IP</b>	<ul style="list-style-type: none"> <li>• Valued at less than \$100,000</li> <li>• is separable, that is, is capable of being separated or divided from the entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, asset or liability</li> <li>• arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.</li> <li>• may, under certain circumstances, be recognised as a Significant IP Asset at some future time</li> </ul>

<sup>2</sup> Procurement guidance: engaging and managing consultants, Department of Housing and Public Works, May 2017.

<sup>3</sup> Ibid.

## 6. IP Management

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State Library will observe the *Queensland Public Sector Intellectual Property (IP) Principles* to guide best practice when creating, recording, using, sharing, protecting, publicly releasing or commercialising IP.

State Library will adhere to the policy requirements of the *Information access and use policy (IS33)*.

State Library acknowledges that effective management of IP requires an awareness of the IP assets owned, controlled and used under licence or agreement.

State Library will comply with the asset management obligations set out in the *Non-Current Asset Policies for the Queensland Public Sector* as required under the *Financial and Performance Management Standard 2019*.

State Library will adhere to the conditions set out in the *Rewards for Creating Commercially Valuable Intellectual Property (Directive 02/07)* for offering monetary rewards to eligible employees who develop intellectual property that is successfully commercialised.

State Library will provide the greatest possible access to content, working within the legislative and regulatory framework of the *Copyright Act 1968* (Cth.) State Library will promote respect for copyright and moral rights, and actively defend copyright works against unfair use and unauthorised exploitation, in both print and digital environments.

State Library Copyright and Privacy Working Group will provide advice to the Executive Management Team on intellectual property (IP) issues, primarily copyright and open access licensing.

State Library acknowledges the importance of Aboriginal and Torres Strait Islander cultural and IP rights, observing the moral, intellectual and cultural rights of Aboriginal and Torres Strait Islanders as owners of their cultural heritage. The collection, access, use and re-use of content where IP is owned by individuals or communities will be undertaken in a culturally sensitive, inclusive and appropriate manner. Types of content may include:

- literary, performing or artistic works
- scientific, technical or ecological knowledge
- cultural heritage objects and
- documentation of Aboriginal people and Torres Strait Islanders in all forms (for example, unpublished reports, manuscripts, photographs, film, sound recordings).

## 7. Ownership of IP

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### 8.1 IP developed by State Library employees

As a general principle, intellectual property created by State Library employees in the course of their employment is owned by the State of Queensland.

### 8.2 IP developed by a third party (Contractors or consultants)

Any contracts, agreements or arrangements between State Library and a third party which will result in the creation of IP, or the possible creation of IP, should specifically address the issues of pre-existing IP, and IP to be created through the contract, agreement or arrangement.

Ownership by State Library of IP created by a third party is the preferred and 'default' position. However, when engaging consultants or contractors, State Library will explore whether ownership by State Library of the IP developed by the contractor/consultant is the best option

for maximising the benefits to Queensland. This may occur if other public interest, such as supporting Queensland industry or facilitating more efficient service delivery is considered more beneficial to the public than the retention of IP by State Library. Where State Library agrees to a consultant/contractor retaining ownership of some or all of the IP rights created during the course of the contract, State Library will ensure that it retains appropriate access, use and maintenance of IP it has paid for through appropriate provisions in any contract, agreement or arrangement.

## **8. Identification, protection and control of IP owned by State Library**

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The Executive Director, Corporate Governance and Operations (EDCGO) is responsible for maintaining a centralised asset register which records any IP assets owned or controlled by State Library. Members of the Executive Management Team are required to notify the EDCGO of any IP created by State Library staff, contractors or consultants that meets the criteria under section 9.1 below.

### **9.1 IP assets**

In order for IP to be considered an Asset (and thus be recorded as an asset in the Balance Sheet of the State Library), it must meet the following criteria:

- substantial time and effort has been expended to create the IP (ie. More than 100 hours)
- substantial funds have been applied to create/acquire the IP (ie. More than \$100,000)
- revenue is earned from licensing or the IP holds a commercial value or potential commercial value
- the IP is registered (ie. a patent or trademark is held, or pending)
- the IP involves a contract, agreement or arrangement between State Library and a third party outlining State Library as the owner or co-owner of IP, the total value of which exceeds \$100,000 or
- the IP is fundamental to the core operations or activities of State Library.

### **9.2 Other IP**

- Other IP relates to separately identifiable IP that may meet the criteria in 9.1, be required to be recognised as an IP Asset.
- The primary consideration of this is likely to be cost, whereby identified IP, when acquired, is valued at less than \$100,000, but whose value may reach or exceed this threshold over time
- If the \$100,000 threshold is reached, the IP must be included on the IP Asset Register.
- All Deeds of Gift containing transfers of ownership of copyright to State Library, must be reviewed on an annual basis to determine whether the individual value of copyright has reached the \$100,000 threshold.

## **9. Use of third-party IP material**

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State Library's use of third-party IP relates predominantly to material in which copyright is owned by a third party.

State Library will seek permission from rights holders prior to incorporating third party IP into IP it is developing. State Library will conduct appropriate searches for rights owners, trademarks, business and domain names, patents, and designs.

State Library will seek to obtain full knowledge of the IP rights associated with original works being donated or purchased for the John Oxley Library prior to their acquisition. The State

Library Deed of gift is used to document where copyright in donated works is transferred to State Library.

Licences for the use of software installed on staff and public terminals will be centrally managed and recorded in a software register maintained by the Information and Communication Technology Services (ICTS) team.

State Library will endeavour to protect itself and creators from the unauthorised use of material available through State, by the inclusion of appropriate copyright statements and notices.

State Library will communicate and/or broadcast copyright materials in events, exhibitions and other public programs using exceptions in the *Copyright Act 1968* (Cth), licence agreements with copyright collecting societies, or licence agreements with individual rights holders. State Library will undertake recordkeeping as required under the terms of these exceptions and agreements.

Staff will reproduce copyright materials for internal administrative use under whole-of-Government licence agreements with copyright collecting societies.

A risk management approach will be taken for the use of material where copyright clearance is unable to be obtained (for example, orphan works).

### **10.1 Moral rights**

State Library recognises and will take reasonable steps to observe the moral rights of individual creators of copyright materials, as set out in the *Copyright Act 1968* (Cth). Moral rights will be observed whether copyright materials are created by staff, clients or other third parties.

### **10.2 Responsibility**

Responsibility for Copyright and Moral Rights is as per the [Copyright and Privacy Working Group Terms of Reference](#). Any Copyright acquired by (or transferred to) State Library should be assessed against 9.1 above and brought to the attention of Director, Finance and Assurance for accounting recognition if the asset criteria are met.

## **10. Reporting**

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The EDCGO will report to the Executive Management Team annually on the performance of State Library in the management of its IP to enable effective review, promote accountability and on-going improvements.

## **11. Related Policies and procedures**

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[SLQ Open data strategy](#)

[SLQ Digital Strategy](#)

[SLQ Protocols for Aboriginal and Torres Strait Islander Collections](#)

[SLQ Right to Information \(RTI\)](#)

[SLQ Procurement](#)

[State Library Copyright and Privacy Working Group Terms of Reference](#)

## **12. References**

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The Policy is supported by:

### **Related legislation**

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last revised: April 2022  
Due for Revision: January 2025

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

[Financial and Performance Management Standard 2019](#)

[Right to Information Act 2009](#)

### **Queensland Government Policies**

[Information access and use policy, IS33 2018](#)

[Software Asset Management Policy 2010](#)

[Non Current Asset Policies for the Queensland Public Sector](#)

### **Queensland Government principles and guidelines**

[Public Sector Intellectual Property Principles Version 2 2013](#)

[Code of conduct for the Queensland Public Service 2011](#)

### **Queensland Government Directives**

[Rewards for Creating Commercially Valuable Intellectual Property](#), Directive 2/07

## **13. Essential considerations**

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Review of this policy has included consideration of the 23 fundamental human rights protected under the Human Rights Act 2019. When applying this policy, the State Library will act and make decisions in a way that is compatible with human rights and give proper consideration to all human rights, as required by the [Human Rights Act 2019](#).

## **14. Approval date**

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Approved by the State Librarian and Chief Executive Officer  
29 April 2022

## **15. Creative Commons**

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