



Copyright and other intellectual property procedure

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Audience

Department-wide

Purpose

This procedure defines intellectual property and outlines the responsibilities of the Department of Education (department) employees and key processes in managing the creation, procurement and use of copyright and other intellectual property (IP).

Overview

This procedure outlines what department employees must do to avoid infringing the copyright and IP of others, and meet obligations under the [Copyright Act 1968 \(Cth\)](#) and support the Queensland Government's [Information access and use policy \(IS33\)](#) and [Intellectual Property Principles](#) (Queensland Government employees only).

Intellectual Property (IP) covers a range of intangible property that results from creative and intellectual effort including literary and artistic works, computer programs, databases, film and sound recording, trademarks, and designs. The most common type of IP that departmental employees will create, acquire and/or use in their work is copyright.

[Copyright exists](#) (DoE employees only) in content developed or acquired by the department whether for public use or for limited use (such as training), as well as in works created or owned by others (i.e. third-party materials) used by the department. Copyright is automatic, and creators or owners do not need to register their copyright or display a copyright symbol for their work to be protected.

The State (as the employer) owns the copyright in material created by its employees in the course of their duties unless otherwise agreed between the employer and employee. It does not matter that the employee creates the material (either wholly or in part) outside normal work hours and without using departmental facilities or equipment. Generally, the deciding factor is whether the materials created relate to the employee's official duties.

Creators also have [moral rights](#) (DoE employees only), which are additional to copyrights and include the right to attribution, the right against false attribution, and the right to have the integrity of their work respected.

Indigenous Cultural and Intellectual Property (ICIP) Rights refers to rights of Indigenous people to protect and maintain their cultural heritage. These rights relate to the control of ICIP – rights to authorise or refuse use, and to be recognised as the owners of ICIP so that people and organisations continue to return to Aboriginal peoples and Torres Strait Islander peoples for consent. While these rights are currently not protected by specific legislation, consideration should be given to ICIP Rights when dealing with existing departmental content or developing new content that includes contributions from Aboriginal and Torres Strait Islander communities. For more information contact [State Schools – Indigenous Education](#).

Responsibilities

All employees

- Avoid infringing the IP rights or [moral rights](#) (DoE employees only) of others.
- Use, to the maximum extent possible, third-party materials that have a Creative Commons or a similar open licence to:
 - minimise the costs of seeking permission and managing third-party licences
 - reduce costs of statutory licences for copying in schools and within the department
 - support the creation of [Open Education Resources](#) (OER).
- Ensure that copying or adaptation of third-party materials is either [permitted or permission](#) (DoE employees only) has been obtained.
- Ensure all third-party materials in departmental publications are [attributed and adhere](#) (DoE employees only) to any licence conditions.
- Maintain appropriate records of copyright materials created, used or procured in accordance with the department's [Information asset and recordkeeping procedure](#).
- Unless otherwise approved by their director, executive director or principal, ensure copyright material owned by the department (materials created or procured by department employees) is able to be released under the [Creative Commons Attribution 4.0 International licence \(CC BY 4.0\)](#) as indicated in department's [Copyright statement](#).
- Decide if material which cannot be released under a Creative Commons licence, should be excluded from The [National Educational Access Licence \(NEALS\)](#) and make this clear in any copyright statement.
- Obtain written permission from their Principal/Director before entering into an agreement to create and develop IP for another entity, including another employer. Refer to [Notification of other employment procedure](#).

School employees

- Comply with the requirements of the statutory and voluntary educational licences, when copying and communicating third-party materials for educational purposes of a school. For further information, refer to [The Official Guide to Copyright issues for Australian schools \(Smartcopying\)](#).
- Participate in copyright sampling surveys as required to meet statutory licence agreements.

Copyright team, Information and Governance Management, Digital Transformation, Information and Technologies Branch

- Provide guides, tools and advice to departmental employees in relation to creation and use of IP, including:
 - location and use of Creative Commons, other openly licensed or public domain materials
 - finding alternatives, workaround or in-house solutions to using third-party materials
 - requesting and managing permissions to use third-party materials (i.e. licences)
 - adopting best practice copyright record keeping and management
 - application of an appropriate and accurate copyright statement to department publications.
- Respond to external parties who request permission to copy department works.
- Liaise with the unit who is custodian of the work, to confirm the department's copyright in the materials.

Director, Information and Governance Management, Digital Transformation, Information and Technologies Branch

- Govern the process for the department to meet its obligations under the [Copyright Act 1968 \(Cth\)](#).
- Govern the process for all significant department owned IP and manage the [Intellectual property register](#).
- Provide advice to directors, executive directors and principals when there is an intention to deviate from the Queensland government policy ([Information access and use policy \(IS33\)](#)) and guidelines ([Intellectual Property Principles](#)) to apply a Creative Commons licence to copyright material owned by the department.

Directors, Executive Directors and Principals

- Ensure contracts and agreements to procure IP (e.g. by outsourcing, consulting and commissioning etc.) assert State ownership as the default position and address (if applicable) the moral rights of external creators. Seek legal advice from [Legal Services Branch](#) as required.
- Seek advice from the [Copyright team](#) when re-using or repurposing previously published material which is to be incorporated into a new, revised or expanded publication.
- Approve any departure from the Creative Commons licensing of State of Queensland copyright material (a requirement of Queensland Government ([Information access and use policy \(IS33\)](#))) in accordance with [Intellectual Property Principles](#) and in consultation with the Director, Information and Governance Management.
- Approve the acknowledgment of employees' or consultants' moral rights, only on request and only if appropriate and feasible.
- Make determinations in consultation with the [Copyright team](#), regarding permission requests from external parties to use department copyright materials.
- Ensure records relating to the creation, procurement and use of copyright material are appropriately stored, monitored and maintained.
- Ensure significant IP (e.g. trademarks, published content such as online courses, teaching materials, posters, videos, ebooks, apps) with public, strategic or innovative value is recorded in the department's [Intellectual property register](#).

Process

Using third-party material

All employees seeking to use third-party material must follow these steps:

Step 1: Assess if the material is protected by copyright

Assess if the material is [protected by copyright](#) (DoE employees only)

If **yes** - go to step 2

If **no** - go to step 3

Step 2: Assess if the use is permitted or if permission is required

Ensure that copying or adaptation of third-party materials is either [permitted or permission](#) (DoE employees only) has been obtained.

If use is permitted

Some creators permit the use of their work without further permission, as long as the user adheres to their conditions. For more information see [Permitted or permission copyright fact sheet](#) (DoE employees only).

Forward all requests received from third parties, to use the department's owned copyright materials not licensed with a CC licence, to the [Information Management team](#).

If permission is required

If it is not clear that the employee can use the material, then they must request permission (a licence) **from the copyright owner in writing**.

The copyright owner may give permission under certain conditions, such as payment (licence fee), a time limit (term), and/or a specific attribution. Contact the [Copyright team](#) for help with permission requests.

Step 3: Attribute and adhere to any conditions

Ensure all third-party materials in departmental publications are [attributed and adhere](#) (DoE employees only) to any licence conditions.

All third-party materials must be attributed (i.e. acknowledged) in department publications (whether print, video, audio or online), even attribution is not a requirement of the licence or the material is in the public domain. An attribution is essential because it tells everyone that copyright in the attributed material is not owned by the department.

Adhering to any conditions is essential for use of third-party material to be legal. In addition to attribution, other conditions may include, but are not limited to:

- non-commercial use only
- no derivatives (i.e. no changes or editing)

- share alike (i.e. share under same licence as original)
- remuneration (a licence fee)
- who can access (e.g. departmental teachers only; publicly available)
- a time limit which states when the licence expires (a licence term)
- the number of copies (e.g. print run) or downloads a person can make.

Apply an appropriate copyright licence

All employees must apply a Creative Commons licence to copyright material owned by the department (unless otherwise approved) through the following process:

Step 1: Assess whether the material can be made publicly available (i.e. published or available beyond the employee's immediate workgroup/unit). Can it be made publicly available?

If **yes** - go to step 2

If **no** - go to step 3

Step 2: Assess if there is any reason that a Creative Commons (CC) licence cannot be applied to the material. Is there any reason that a CC licence cannot be applied?

If **yes** - obtain approval from Director, Executive Director or Principal to depart from the CC licensing framework and record the approval. Refer to [Queensland Public Sector Intellectual Property Principles](#).

If **no** – determine which CC licence will be applied. Refer to the [Creative Commons licence chooser](#).

Step 3: Communicate the licence information

Unless otherwise indicated, the [Copyright](#) link in the footer of departmental websites makes content available under the [Creative Commons Attribution 4.0 International licence \(CC BY 4.0\)](#).

If the default CC BY licence is not appropriate, the responsible employee (e.g. project manager) must add an applicable copyright statement to the publication. Examples:

- © State of Queensland (Department of Education) [Year]. With the exception of Government Coat of Arms, logos, trademarks, branding, personal information or material otherwise indicated, content in this publication is available under the [add the name of the chosen CC licence hyperlinked to relevant deed]
- Where re-use of publicly available content must be limited, and approval has been given to depart from the Creative Commons licensing framework, the following restrictive statement could be added:
© State of Queensland (Department of Education) [Year] All rights reserved.

Maintain records for copyright and other IP

Step 1: Record copyright elements used in significant publications

When developing significant assets (e.g. curriculum projects, online courses, ebooks, websites, training and professional development materials), the author must record the incorporated copyright elements (e.g. material sourced under open licences, content for which specific permission has been obtained, department-

created diagrams and illustrations). The [Copyright register template](#) (DoE employees only) can be used to record copyright elements in an asset.

Step 2: Save and maintain records relating to use, creation and procurement of copyright and other IP

Directors, Executive Directors and Principals must ensure all records relating to copyright and IP are saved in the relevant records management system (department, region, school), and materials acquired under limited terms (e.g. a time-limited licence) are monitored and use discontinued when terms expire. Saved records should include any copyright licences, permission emails, contractor agreements, assignment of copyright, MOUs with other organisations, and the copyright register (if one has been used).

Step 3: Record significant copyright or other IP in the department's IP register

The Director, Executive Director or Principal must ensure significant IP (e.g. trademarks, published content such as online courses, teaching materials, posters, videos, ebooks, apps) with public, strategic or innovative value created by their business unit or school is recorded in the department's [Intellectual property register](#). For assistance, contact the [Copyright team](#).

Definitions

Term	Definition
Intellectual property	Intellectual property covers a wide range of rights that protect the product of original and creative effort, including copyright, patents, industrial designs and trademarks. Copyright makes up the major part of the department's intellectual property.
Copyright materials	In this procedure the term 'materials' has been used to describe any copyrightable material, however the Copyright Act 1968 (Cth) divides materials protected by copyright into two categories: 'works' and 'subject matter other than works'. Examples of 'works' are: literary, dramatic, music and artistic (including, but not limited to, all text-based works, web pages, computer programs, scripts, screenplays, choreographed shows, melodies, sheet music, pop songs, jingles, film scores, photographs, graphics, icons, illustrations, paintings, sculpture). Examples of 'subject matter other than works' are sound recordings, films, sound and television broadcasts and published editions (including, but not limited to, podcasts, CD's mp3's, iTunes, movies, videos, animations, interactive games, radio and TV broadcasts, layout and look of a publication).
Use	Copyright law gives the copyright owner rights: the right to copy/reproduce, the right to publish the right to perform the work in public, the right to adapt, and the right to communicate their material. A person is making use of copyright materials if they perform any of these rights (i.e. if they copy, and/or adapt, and/or communicate the material). Use of copyright materials requires permission from the copyright owner.

Term	Definition
Third-party materials	Materials in which copyright is not owned by the State of Queensland, but rather is owned by another party (a third party).
Moral rights	Moral rights are separate and in addition to, the ownership of copyright. The Copyright Act 1968 (Cth) confers certain moral rights on creators: the right of attribution of authorship, the right not to have authorship of work falsely attributed; and the right of integrity of authorship of a work.
Creative Commons	Creative Commons (CC) licences are a free, easy-to-use and internationally recognised system that allows copyright owners to permit the use of their work without payment, and subject to the conditions of a selected licence. There are six CC licences which each contain a different combination of four licence conditions (BY attribution, ShareAlike, NonCommercial, and NoDerivatives). CC licences cannot be revoked.
Public domain	When referred to in relation to copyright law, public domain means that copyright protection has expired or is waived. In general, works enter the public domain 70 years after the death of the creator. Works that are in the public domain can be shared, remixed and reused by everyone with no restrictions. Public domain does not mean accessible or able to be viewed by the public. It is a common misconception that materials viewed on the internet are 'in the public domain'. Materials on the internet are (usually) publicly available to view, not to copy.
Open Education Resources (OER)	OER are teaching and learning materials that are available for everyone to use and are generally licensed under a Creative Commons (CC) licence. OER gives educators the ability to legally adapt and reuse materials for their students, while reducing copyright costs to the education system.
The National Educational Access Licence (NEALS)	The National Educational Access Licence (NEALS) is a co-operative agreement between the education departments of Australian states and territories to share publications produced for and by schools with each other free of charge. Publications from the Queensland Department of Education are automatically part of NEALS unless an opt-out statement is included with the material. The wide application of the Creative Commons Attribution licence by education departments has largely replaced the need to rely on the NEALS agreement.

Legislation

- [Copyright Act 1968 \(Cth\)](#)
- [Copyright Amendment \(Service Providers\) Act 2018 \(Cth\)](#)
- [Human Rights Act 2019 \(Qld\)](#)

Delegations/Authorisations

- Nil

Policies and procedures in this group

- Nil

Supporting information for this procedure

- [Moral rights consent form](#)

Other resources

- [Attribute and adhere copyright fact sheet](#) (DoE employees only)
- [Copyright and other Intellectual Property](#) (DoE employees only)
- [Creative Commons licences](#)
- [Information access and use policy \(IS33\)](#)
- [Information asset and recordkeeping procedure](#)
- [Intellectual property register](#)
- [Moral rights copyright fact sheet](#) (DoE employees only)
- [Obtaining and managing student and individual consent procedure](#)
- [Permitted or permission copyright fact sheet](#) (DoE employees only)
- [Queensland Public Sector Intellectual Property Principles](#)
- [The Official Guide to Copyright issues for Australian schools \(Smartcopying\)](#)
- [Indigenous Cultural and Intellectual Property Rights](#)
- [National Educational Access Licence for Schools \(NEALS\)](#)
- [Open Education Resources \(OER\)](#)

Contact

Copyright team, Information and Governance Management

Digital Transformation, Information and Technologies Branch

Email: Copyright.ITB@qed.qld.gov.au

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3/12/2023

Superseded versions

Previous seven years shown. Minor version updates not included.

5.0 Copyright and other intellectual property procedure

4.0 Intellectual property and copyright use

Creative Commons licence

Attribution CC BY

Refer to the [Creative Commons Australia](https://creativecommons.org/) site for further information