



Intellectual property management

A guide for WA TAFE Colleges

The term 'intellectual property' (or 'IP') is used to describe the intangible rights associated with creativity, innovation and business reputation. It is a general legal term and covers a number of areas of the law, including copyright, which protects the right of the copyright owner to copy, communicate and control original literary, musical and artistic works.

Ownership of IP rights allows the owner to assert legal rights and proprietorship over their IP. The owner of IP can rightfully assign, develop, exploit, franchise, license, publish, sub-license, use or utilise their IP in any manner for commercial or non-commercial purposes. The right to deny or restrict the use of the IP comes with IP ownership. This ownership allows the owner to commercially exploit and obtain benefit from their IP.

Ownership and management of IP

WA TAFE colleges, established under the *Vocational Education and Training Act 1996* (VET Act), generally have ownership rights and authority over IP created by their employees. Ownership of IP allows TAFE colleges the right to determine the use of their IP, as well as the right to exploit it commercially where appropriate.

Any commercialisation of IP should be considered in accordance with legislation such as the *Financial Management Act 2006*, the VET Act, TAFE ministerial guidelines, and the [Western Australian Government Intellectual Property Policy 2023](#) and [Agency Toolkit](#).

In line with government policy, WA TAFE colleges should implement IP policies and procedures to manage their IP in a consistent, transparent and accountable manner.

Each TAFE college is responsible for dealing with the administration of its IP and the management of its IP assets. Employees should advise their TAFE college of relevant potential commercial opportunities.

While employees are advised to seek and obtain specific advice from their college on the administration of pertinent IP issues, further information may be obtained from sectorcapability.ip@dtwd.wa.gov.au or from smartcopying.edu.au.



Formal agreements for the provision of products and services containing IP

When a TAFE college enters into a collaboration or formal agreement to provide products and services that include IP rights, the TAFE college must ensure that there is a formal agreement in place to address any possible IP ownership issues.

The agreement should cover the following aspects:

- ownership rights in relation to the end product, resultant material or products of the collaboration or contract agreement;
- ownership rights in any IP brought to the project by any of the parties, including referral to rights associated with the underlying or original material, and subsequent rights in the enhanced or modified material;
- ownership rights of IP in future updates or modifications to the products of the agreement, including the right and authority of the parties to authorise amendments at a later stage and/or join with another partner to update the IP;
- the right to license third parties to develop or amend products or materials produced under the agreement;
- rights to commercialise the IP; and
- if the IP is commercialised, how the revenue from the commercialisation is to be shared.

Individuals, industry bodies, the WA Department of Training and Workforce Development (the Department) or any other entity may assign rights to a TAFE college, normally on a contractual or licence basis.

When an organisation grants a licence to a TAFE college to use its material, the agreement must include a warranty that the organisation's representative has the ability to grant such a licence and that the grant does not infringe any third-party's rights.



Preventing infringement of third-party IP

TAFE colleges should try where possible to use their own IP in materials or products developed or created for TAFE purposes.

When third-party content is required, TAFE resource developers may consider using:

- links to resources (instead of copies) where possible, as linking is not a copyright activity;
- openly licensed content such as Creative Commons or public domain resources;
- content obtained with permission or a licence; or
- material used under a statutory licence or educational exception, as long as you comply with the requirements of the relevant licence or exception.

For more information, see the Department's other copyright PDFs and visit 'Creating Learning and Teaching Resources: A copyright guide for TAFE resource developers' at smartcopying.edu.au.

When including third-party IP in any documents intended for commercial/fee-for-service purposes, permission must be gained in writing from the copyright owner prior to the documents' publication. The copyright owner must be told of the intended commercial use. This includes educational material intended to be sold to students for a profit.

Student IP

Students will generally own the copyright in their work (unless it was created in conjunction with the TAFE college or an employer). Permission should be obtained from the student (or parent/guardian if the student is under the age of 18 years) to reproduce their work in any format.

IP and employment

Normally, TAFE colleges will own the IP created by their employees in the course of their employment. This extends to situations where the employee has not been specifically instructed or funded to create or use such IP, but rather shows initiative to develop a system or product. The TAFE college also retains ownership in instances where an employee is specifically commissioned to do work, and the TAFE college has provided the necessary resources, equipment, facilities or money.

Creation of IP outside employment

Where an employee (employed in any capacity – including casual or contracted staff) intends to create IP outside their normal course of employment and wishes to assert ownership of the IP developed, the employee should have an agreement in writing with their TAFE college before embarking on the creation of the IP, outlining:

- the nature of the IP; and
- the circumstances surrounding its creation.

Note that under section 102 of the *Public Sector Management Act 1994*, employees of government agencies must receive written permission from the employing authority to undertake any outside employment. Failure to comply with these provisions may result in disciplinary actions as specified under the Act.

Pre-existing IP

Where an employee, lecturer, contractor, consultant or other person brings pre-existing IP to a project and chooses to retain ownership, the TAFE college should seek an irrevocable, non-exclusive, non-transferable, royalty-free right to use the IP.

Collaborative IP ownership

Where materials are developed by a team or as part of a collaborative effort, ownership of the IP as well as the right to access and commercially exploit the IP should be agreed in writing prior to the commencement of the project.



Rewarding employees for the development of IP

According to the 2023 *Western Australian Government Intellectual Property Policy*, government agencies may 'recognise and, as appropriate, and subject to the law and all legal requirements, reward outstanding achievement by employees who create original, significant and valuable IP'.

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For more information, see the [*Western Australian Government Intellectual Property Policy 2023*](#) and [*Western Australian Government Intellectual Property Policy: Rewarding Innovative Public Sector Employees*](#).

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Indigenous cultural and intellectual property rights

Indigenous cultural and intellectual property rights (ICIPR) refers to Indigenous peoples' rights in their culture and heritage. Indigenous peoples' heritage is a living heritage. It includes objects, knowledge, performing works and literary works – created in the past, now and in the future. The nature and use of Indigenous peoples' heritage is passed down from generation to generation. Usually the particular objects, sites and knowledge pertain to a particular Indigenous group or territory.

ICIPR can exist in:

- performances, literary and artistic works – such as songs, music, dance, stories, ceremonies, symbols, language and designs;
- all items of movable cultural property;
- immovable cultural property – such as sacred sites and burial grounds; and
- documentation of Indigenous peoples' heritage in archives, films, photographs, video and audio footage and all forms of media.



Protection under ICIPR

Essentially, ICIPR are a bundle of rights of Indigenous peoples that protects the right to:

- own and control ICIPR;
- commercialise ICIPR in accordance with traditional laws and customary obligations;
- benefit commercially from the authorised use of ICIPR;
- enjoy full and proper attribution; and
- protect significant and sacred materials.

There is no specific legislation in Australia that recognises ICIPR. Increasingly, Indigenous communities are using non-legislative means such as contracts and protocols to protect their ICIPR, as IP legislation is not always adequate. For example, copyright can only provide limited protection of ICIPR, in particular:

- the material form requirement is not always met where the stories and songs have been passed orally from generation to generation;
- the period of copyright protection is finite and is unable to protect traditional art that has been passed through generations; and
- copyright is generally granted to the creator and does not recognise communal or customary ownership of cultural heritage of Indigenous tribes and clans.



Guidelines when negotiating with owners and custodians of ICIPR

The following questions are intended as a best practice guide to assist educational institutions in negotiations and consultations with Indigenous communities to ensure that an Indigenous perspective is sought on all issues surrounding the project.

- Does your nominated Indigenous community representative have the authority to speak for or on behalf of the proposed project?
- Have you received written consent from the traditional owners/custodians of ICIPR for the project?
- Does the community understand the aims, objectives and methodology of the project?
- Does the community understand how the outcomes of the project will be used?
- Have you made arrangements with the community to provide feedback on the project at all stages?
- Have you acted in good faith and respected the privacy of Indigenous peoples and communities?
- Have you ensured that the community understands the copyright issues of the project?
- Does your proposal safeguard Indigenous sensibilities?

Any project proposals should also demonstrate that:

- the project will not result in damage to Indigenous cultural integrity; and
- the collected information remains the intellectual property of the people who provided it.

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Revised May 2025