

Intellectual Property Pack

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# Guidelines for intellectual property

All employees have a responsibility to safeguard the Department’s intellectual property (IP) and take appropriate steps to:

* acknowledge the ownership of the Department’s and other third party IP;
* prevent the infringement of a third party’s IP;
* take reasonable steps to keep IP of special value or importance confidential, prior to its publication or commercialisation; and
* provide access to useful materials developed in public schools.

The Department encourages the sharing of its IP among its employees and seeks to capitalise on valuable IP and protect it as an asset for the benefit and enhancement of the Department and the State but not do so in a manner, which would significantly interfere with the Department’s operational activities or service delivery.

The Department seeks to recognise employees who produce valuable IP and does this through:

* public attribution at presentations;
* providing opportunities for writers to attend and speak at conferences and seminars;
* consideration of the temporary release or secondment of an employee to work for a person or organisation that licences or purchases IP from the department for the purposes of being involved in the commercialisation of the IP; and
* other avenues as determined from time to time.

For collaboration across the system, copies of works should be made available to other employees.

In line with the draft Western Australian Government’s [Intellectual Property Policy reviewed May 2012](http://www.commerce.wa.gov.au/ScienceInnovation/PDF/Publications/Innovation/Innovation_Intellectual_Property_Guidelines.pdf), the Department has adopted the internationally recognised Creative Commons (CC) licensing framework and applies the least restrictive copyright protections that are legally and operationally applicable to government information for its own publicly available materials e.g. website and corporate publications. Examples of these licences are either the CC BY licence  (BY indicates attribution) or the CC BY NC ND licence  (attribution, non commercial, no derivatives).

The CC licensing framework cannot be applied to works created by schools as schools copy third party material under statutory and voluntary licence agreements.

**International Standard Book Number (ISBN)**

Corporate publications should generally be given a ISBN or ISSN or equivalent. The reprinting with changes of any publication is equivalent to re-publication and requires a new ISBN or equivalent.

To facilitate management of information resources in school libraries and to provide a permanent record of a publication, a SCIS (Schools Catalogue Information Service) number should also be assigned.

Ephemeral materials (those that have a short term value) do not require an ISBN and only get a SCIS number if they have lasting information value.

**Copyright Statement**

For the Department and schools, the copyright notation would normally be:

© Department of Education Western Australia (insert year date).

It is best practice for the copyright statement to be placed in the footer of each page*.*

**Creative Commons logo**

Corporate publications and material placed on the Department’s Internet and Intranet sites should have a Creative Commons CC BY(attribution) logo  or a CC BY NC ND logo (attribution, non-commercial, no-derivatives)  placed in the footer of each page. The CC BY ND NC logo should be used where the Department considers the material should not be used for commercial purposes and should not be altered. For more information on the Creative Commons licences refer to <http://creativecommons.org/licenses/>

## Moral Rights

Moral rights are separate from copyright Moral rights and are associated with an author's creativity and personality, as opposed to the 'economic' rights already protected under the Copyright Act 1968. Moral rights are only held by individuals as authors of their work. Unlike the economic rights of a copyright owner, moral rights are not transferable by assignment, by will or by operation of law.

Moral rights are personal rights granted to authors of literary, dramatic, musical, and artistic works, and films, including:

* The right of attribution of authorship. The author has the right to be identified as the author of the work or film when it is presented to the public.
* 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 not to have an altered work being attributed as unaltered.
* 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. A treatment is derogatory if it in some way prejudicially affects the honour or reputation of the author.

It is uncommon for the moral rights of public servants to be acknowledged for works created during the course of their employment, unless the works are beyond that expected of the person and their position.

Legal advice provided to the Department indicated that the employer, as the owner, is generally entitled to determine whether to publish the work, alter the work or attribute the work. In most organisations it would be physically impossible for the employer to observe a moral right of an employed author, as it would involve detailed assessment of each work created.

Section 195AR of the Copyright Act provides that it will not be an infringement of the right of attribution of authorship if it was reasonable not to identify the author. The matters to be taken into account in making such a determination are set out in section 195AR(2) and 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; and
* whether the work was made in the course of the author's employment.

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

In some instances employees are acknowledged internally within the Department for a range of reasons including the retention of corporate memory and employee encouragement and recognition; however, this acknowledgement is not moral rights acknowledgement.

## trademarks

The Department has applied for, and been granted a number of registered trademarks e.g. First Steps for significant works or corporate slogans and logos. By registering the trade mark, the use of the title and logo is legally enforceable and gives the Department the exclusive right to commercially use, licence or sell it for the category of goods and services that it is registered under, and to distinguish the goods or services of the Department from those of another.

Staff members who are working on project/programs that may have significant commercial value should contact Copyright@education.wa.edu.au for advice.

## copyright infringEment

Common examples of copyright infringement that could occur in the Department are:

* copying more than the amount of a work permitted to be copied by the education statutory licences, a direct licence or a fair dealing exception;
* downloading and sharing MP3 files of music, videos or games without permission of the copyright owner;
* putting music on the Internet for download by students or the public;
* scanning a photograph that has been published and using it without permission or attribution and in the absence of an exception (lack of attribution would be an infringement of the creator's moral rights); and
* installing more copies of a software program or CD ROM on computers than are allowed for in the relevant licence agreement.

#  Imprint page – general use

To be inserted on the imprint page or at the bottom of the title page or in an appropriate location for a non-book item, i.e. kit, electronic resource, video, podcast etc. Note any third party works contained within the document must be cleared for use under a Creative Commons BY licence.

**TITLE:**

**SCIS No.**

**ISBN**

©Department of Education, Western Australia [year of publication]

For information on copyright please visit <http://www.det.wa.edu.au/copyright> or email Copyright@education.wa.edu.au.

Department of Education

151 Royal Street

East Perth WA 6004

 or 

Further information please contact: [OPTIONAL]

[name/branch]
Telephone: +61 8 9264 [extension]

Facsimile: +61 8 9264 [extension]

Email: [name/branch]@education.wa.edu.au

URL: [http://www.det.wa.edu.au/[branch](http://www.det.wa.edu.au/%5Bbranch)]

# Imprint page - commercial product

To be inserted on the imprint page or at the bottom of the title page or in an appropriate location for a non-book item, i.e. kit, electronic resource, video, etc.

**TITLE:**

**SCIS No.**

**ISBN**

©Department of Education, Western Australia [year of publication]

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the Department of Education.

For all copyright requests please visit <http://www.det.wa.edu.au/copyright> or email Copyright@education.wa.edu.au.

Not for NEALS 

Department of Education

151 Royal Street

East Perth WA 6004

Further information please contact: [OPTIONAL]

[name/branch]
Telephone: +61 8 9264 [extension]

Facsimile: +61 8 9264 [extension]

Email: [name/branch]@education.wa.edu.au

URL: [http://www.det.wa.edu.au/[branch](http://www.det.wa.edu.au/%5Bbranch)]

# Copyright Clearance Request for use of Department of Education’s Intellectual property

Principal Consultant, Intellectual Property and Copyright
Department of Education
151 Royal Street
EAST PERTH WA 6004

Email Copyright@education.wa.edu.au

Phone 08 9264 4058

The [insert name of organisation} wishes to produce the following resource/work [insert type of resource/work] for [insert use e.g. conference paper, training materials, textbook]. These works will be published in [insert formats] format(s) and distributed at [insert cost e.g. no payment, cost recovery, profit etc} to [insert recipients e.g. conference delegates, purchasers - add any other markets and the basis upon which the resource will be provided to them].

The items we are interested in are:[identify material fully by citing title, author, publisher, date of publication, chapter, page etc or Web site URL, organisation, feature etc – attach photocopy if appropriate (particularly of imprint page and any acknowledgements)]

The resources developed will be copyrighted to [insert name]. The rights sought would in no way restrict republication of your work by you or by others authorised by you. If you are willing to grant this permission, we would be pleased to include suitable acknowledgement.

Name [of person requesting permission], [insert position & organisation]

Address

Telephone

Fax

Email

# Guidelines on contracts with third parties

In order for the ownership of IP to be clear and traceable, the contracts should:

* Outline the terms and clearly state if and how the ownership of moral rights will be attributed; and
* Clearly document ownership of the IP between the Department and the third parties, by detailing:

The nature and proposed use of the IP that is the subject of the contract;

The copyright owner/s of the product;

The ownership and confidentiality of any pre-existing IP or knowledge of the contractor;

The extent of ownership (shared or otherwise) of the IP developed during the contract, for example, the end product or products of collaboration;

The date/s of the duration of the contract;

The extent to which the joint owners may use and commercially exploit the IP once the contract has expired or before, how revenue will be distributed;

Ownership rights of IP in future enhancements or modifications to the products of the agreement, including the right and authority of the parties to authorise enhancements at a later stage and join with another partner to enhance the IP;

If the product is licenced whether it is an exclusive licence or non-exclusive; and

Right to license other third parties to further develop or enhance the products or materials produced under the agreement

For further information on compiling contracts please contact the Principal Consultant, Intellectual Property and Copyright.

IP developed under the ‘direction or control’ of the Crown belongs to the Crown unless there is a written agreement stating otherwise.

A suitable clause for specifying IP rights as a special condition of contract for the provision of services where there is no pre-existing IP and the new IP being generated is specifically for the Department or school is as follows:

“The title, copyright and all other rights to the intellectual property in relation to all programming, documents, photographs, drawings, pictures, designs, films, slides, video tapes, audio tapes, objects, displays and other materials of whatsoever kind produced, created, designed, devised or made by, or on behalf of the Contractor for the purposes of this Contract shall forthwith vest in the Department of Education upon payment to the Contractor of the Contract sum (or fees or whatever) hereunder.”

#

# Major issues to be considered in licensing transactions

Generally, licensing occurs in a commercial context and is tailored to meet the commercial objectives of both parties. It is recommended that a licence be prepared by a suitably qualified person so that all necessary provisions are included.

Identify the parties:

names; and

addresses.

Contract:

statement of aims; and

commencement and duration.

Definitions:

contract products;

intellectual property;

know-how; and

licensed territory.

Grant of licence:

type of licence (exclusive, sole or non-exclusive);

type of rights granted (manufacture, market);

licensed territory;

exclusive;

non-exclusive;

performance obligations;

conversion to non-exclusive;

failure to meet set targets or pay minimum royalty;

right to sub-licence; and

warranties.

Transfer of materials, data, and know-how:

description of materials, data, know how provided; and

training requirements (if relevant).

Production:

requirements;

materials;

packaging; and

quality control and inspections.

Marketing:

licensee to use best endeavours;

use of trade marks (if relevant);

advertising and promotion of contract products; and

product liability and indemnities.

Financial arrangements fees and royalties:

royalties:

base;

amount;

fixed or sliding; and

lump-sum (up-front) or running.

cessation of royalty;

minimum royalties; and

method and currency of payments.

Approach to improvements:

licence or assignment;

reciprocity; and

royalty-free or royalty bearing.

Identify intellectual property:

obligations in relation to maintenance or defence of IP rights; and

assignment and reassignment of IP rights (trade marks).

Confidentiality:

obligations to be imposed;

duration;

cessation;

scope; and

safeguard confidential information.

Termination of agreement:

expiry;

renewal (if appropriate);

circumstances in which agreement terminates; and

reasons for premature termination.

Post-termination:

obligations on the licensee;

pay outstanding licensor fees and royalties;

confidentiality obligations;

return drawings, manuals, etc; and

reassignment.

# guidelines for Requests by third parties

Requests by third parties are to contain the following information:

* publication details of the work and year;
* title or name of the work;
* particular pages or footage;
* illustrations or sections within the work;
* purpose and aim of the new work or production;
* intended audience and market that the new work or production targets;
* intent cost; and
* if possible, a photocopy or electronic extract of the work.

The decision on whether permission is granted when third parties apply to use the Department’s IP for reasons other than personal research/education are based on any/all of the following factors:

* the nature of the IP, for example, copyright or a trademark;
* the amount and context for use of the materials, generally small amounts of work requested for reproduction by other educational agencies will be permitted except where the Department may wish to publish the work at a later date;
* whether it would be detrimental to the Department, or if there would be a conflict of interest in the requesting party publishing work belonging to the department;
* the value of the IP to the Department now or for future strategies e.g. if it is suitable for commercialisation in the future;
* how advantageous it would be to have Department material published by a third party;
* whether the Department owns the IP or whether there are parts which belong to a third party;
* whether there may be privacy issues e.g. photographs of students;
* who is/are the other parties wishing to use the IP and whether it will be for commercial gain within or outside of WA or Australia;
* what they intend to do with the IP;
* whether it will be changed in anyway and if so, whether the Department would consider the changes to be derogatory to the IP or a project or to individuals;
* if there are any aspects which need to be kept confidential;
* how much of the IP the third party wishes to use;
* whether the Department wishes to limit the use of the IP in question; and
* how the third party intends to acknowledge the Department.

Other considerations which require addressing at the same time are:

* whether there will be a register of IP showing the initial IP being owned by the two parties and any IP developed either jointly or singularly in the future;
* whether the Department intends to charge for the use of the IP, and if so the amount; and
* what kind of licence the Department would consider using and whether it must it be limited in time and purpose, as the Department needs to ensure that it can continue to use its IP and preferably retain the use of any further developments of it for its own purposes.

Unrestricted permission to copy Department-owned copyright material cannot be granted to others unless:

* no third party IP is contained in the document; or
* the Department has the right to grant onward permissions/licences in respect of third party IP; or

the Department is able to identify the owner of the third party IP so that their permission can also be sought.

# department Website Third Party Copyright Clearance Form

The Department of Education has a legal obligation to obtain permission from the owners of any third party content (works) before the works are placed on any of the Department’s websites.

Third party works are those that have not been created by the Department and include artwork, logos, images, photographs, text, conference papers, published articles, podcasts, applications, music etc.

If a third party’s work is placed on a website without their permission, it is an infringement of the third party’s copyright and any copies made of the infringing material will also be illegal copies. Furthermore if the third party’s material is changed in any way e.g. shortened, paraphrased, without permission this may be seen as an infringement of the third party’s Moral Rights and legal action may be taken in this regard.

The Department’s Creative Commons licence enables you to copy freely from its websites for the purpose of educating their students. Therefore it is essential that before any third party copyright content is included on a department website permission is not only gained from third parties to reproduce their materials on the websites, but also that it can be copied by educational institutions without being subject to remuneration through the Statutory Licences.

Manager/Project Coordinator Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Work Area\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Central or Regional Office \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of third party work \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description of third party work e.g. text, picture, diagram, artwork \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Has written clearance been obtained to place the work on website? Yes/No (Please attach)

Date \_\_\_\_\_\_\_\_\_\_

Has written clearance been obtained for Australian educational institutions to copy the work from the DET website for educational purposes for free? Yes/No

Are there any special conditions? Please state and attach documentation. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Has the original material been changed in any way? Yes/No If yes, please state how it has been changed. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Do you have permission to change it? Yes/No (Please attach permission)

DoE WA HPRM reference number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Copyright Clearance Request Letter for use of Third party material on A department or school website

NAME

TITLE

ORGANISATION

ADDRESS

[DATE]

Dear [TITLE AND SURNAME]

**[NAME OR DESCRIPTION OF WORK]**

The [DEPARTMENT/SCHOOL] is writing to request permission to use the work, [NAME OR DESCRIPTION OF WORK] (“the “Work”) for inclusion on the following website: [INSERT WEBSITE NAME]. A copy of the work is enclosed.

In addition, the [DEPARTMENT/SCHOOL] would like to modify the work in the following way: [EXPLAIN OR ATTACH COPY OF ALTERED WORK].

It is the Department of Education’s policy to make the information on its website available free of charge to schools and education departments around Australia for their educational purposes under the Creative Commons licence.

If you agree to grant the requested permission, please complete and sign the attached form and return a copy to [NAME AND UNIT] at the following fax number [INSERT FAX NUMBER] or return by email address to [INSERT E-MAIL ADDRESS] or mail in the self-addressed return envelope provided.

If you are not the rights holder of the Work, it would be appreciated it if you would provide us with any contact information you have about the rights holder.

If you require any additional information regarding this request, please contact [NAME AND UNIT] on [INSERT PHONE NUMBER] or [INSERT EMAIL ADDRESS]*.*

If you require further information regarding the Creative Commons licence please refer to <http://www.det.wa.edu.au/copyright> or email Copyright@education.wa.edu.au

Yours Sincerely,

[NAME

TITLE]

**Permission to Use Work**

|  |  |
| --- | --- |
| **Work** | [INSERT NAME OR DESCRIPTION OF WORK] |
| **Name** | [INSERT NAME] |
| **Company / Organisation** | [INSERT COMPANY OR ORGANISATION NAME] |
| **Address**  | [INSERT ADDRESS, IF KNOWN] |
| **Telephone Number/s** | [INSERT TELEPHONE NUMBERS, IF KNOWN] |
| **Fax Number** | [INSERT FAX NUMBERS, IF KNOWN] |
| **Email address** | [INSERT EMAIL ADDRESS, IF KNOWN] |

Please indicate the permission granted by ticking the appropriate box.

I confirm that I am the rights holder of the Work, and I grant the following rights without payment for the full term of the Work’s copyright:

|  |  |
| --- | --- |
|  | I authorise the [DEPARTMENT] to copy [AND ALTER AS INDICATED] and communicate the Work on its website and to make the Work available free of charge to schools and education departments around Australia for their educational purposes under the Creative Commons licence. |

Please credit me as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
|  | I do not authorise the [DEPARTMENT] to copy or communicate the Work. |
|  | I am not the rights holder of the Work. The contact details of the rights holder are as follows: |

|  |  |
| --- | --- |
| Signature: |   |
| Date: |   |
| **Office Use Only****NOTE: This information must be stored on DoE WA HPRM or a school file.** |

# sample letter to request permission to use third party material in a department or School publication

[NAME

TITLE

ORGANISATION

ADDRESS]

[DATE]

Dear [TITLE AND SURNAME]

**[NAME OR DESCRIPTION OF WORK]**

The [DEPARTMENT/SCHOOL] is writing to request permission to use the work, [NAME OR DESCRIPTION OF WORK] (“the “Work”) for inclusion in the following publication: [INSERT INTENDED USES] and in the following formats [INSERT INTENDED FORMATS E.G. CD ROM, DVD, A4 PAMPHLET]. A copy of the work is enclosed.

In addition, the [DEPARTMENT/SCHOOL] would like to modify the work in the following way: [EXPLAIN OR ATTACH COPY OF ALTERED WORK].

The [DEPARTMENT/SCHOOL] would also like to make the publication available free of charge to schools and education departments around Australia for their educational purposes under the Creative Commons licence.

If you agree to grant the requested permission, please complete and sign the attached form and return a copy to [NAME AND UNIT] at the following fax number [INSERT FAX NUMBER] or return by email address to [INSERT E-MAIL ADDRESS] or mail in the self-addressed return envelope provided.

If you are not the rights holder of the Work, it would be appreciated it if you would provide us with any contact information you have about the rights holder.

If you require any additional information regarding this request, please contact [NAME AND UNIT] on [INSERT PHONE NUMBER] or [INSERT EMAIL ADDRESS]*.*

If you require further information regarding the Creative Commons licence, please refer to http://det.wa.edu.au/copyright or email Copyright@education.wa.edu.au.

Yours sincerely,

[NAME

TITLE]

**Permission to Use Work**

|  |  |
| --- | --- |
| **Work** | [INSERT NAME OR DESCRIPTION OF WORK] |
| **Name** | [INSERT NAME] |
| **Company / Organisation** | [INSERT COMPANY OR ORGANISATION NAME] |
| **Address**  | [INSERT ADDRESS, IF KNOWN] |
| **Telephone Number/s** | [INSERT TELEPHONE NUMBERS, IF KNOWN] |
| **Fax Number** | [INSERT FAX NUMBERS, IF KNOWN] |
| **Email address** | [INSERT EMAIL ADDRESS, IF KNOWN] |

Please indicate the permission granted by ticking the appropriate box.

I confirm that I am the rights holder of the Work, and I grant the following rights without payment for the full term of the Work’s copyright:

|  |  |
| --- | --- |
|  | I authorise the [DEPARTMENT] to copy [AND ALTER AS INDICATED] and communicate the Work and to make the Work available free of charge to schools and education departments around Australia for their educational purposes under the Creative Commons licence. |
|  | I authorise the [DEPARTMENT] to copy and communicate the Work for the following purposes only: [INSERT PURPOSES] |

Please credit me as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
|  | I do not authorise the [DEPARTMENT] to copy or communicate the Work. |
|  | I am not the rights holder of the Work. The contact details of the rights holder are as follows: |
| Signature: |   |
| Date: |   |
| **Office Use Only****NOTE: this information must be stored on DoE WA HPRM or a school file.** |

# SAMPLE Letter to Extend Existing Copyright Permission

[NAME

TITLE

ORGANISATION

ADDRESS]

[DATE]

Dear [TITLE AND SURNAME]

**[NAME OR DESCRIPTION OF WORK]**

The [DEPARTMENT/SCHOOL] is writing in relation to permission you previously gave the [DEPARTMENT/SCHOOL] to use your work, [NAME OR DESCRIPTION OF WORK] (“the “Work”). A copy of the permission is attached. [IF NO WRITTEN PERMISSION, PROVIDE DETAILS OF VERBAL PERMISSION].

The [DEPARTMENT/SCHOOL] would like to extend the permission you granted to enable it to make the Work available free of charge to schools and education departments around Australia for their educational purposes under the Creative Commons licence.

If you agree to extend the permission as requested, please complete and sign the attached form and return a copy to [NAME AND UNIT] at the following fax number [INSERT FAX NUMBER] or by email [INSERT E-MAIL ADDRESS] or return by mail in the self-addressed return envelope provided.

If you require any additional information regarding this request, please contact [NAME AND UNIT] on [INSERT PHONE NUMBER] or [INSERT EMAIL ADDRESS]*.*

If you require further information regarding the Creative Commons licence, please refer to <http://det.wa.edu.au/copyright> or email Copyright@education.wa.edu.au.

Yours sincerely,

[NAME

TITLE]

**Return Form- Extension of Permission to Use Work**

|  |  |
| --- | --- |
| **Work** | [INSERT NAME OR DESCRIPTION OF WORK] |
| **Name** | [INSERT NAME] |
| **Company / Organisation** | [INSERT COMPANY OR ORGANISATION NAME] |
| **Address**  | [INSERT ADDRESS, IF KNOWN] |
| **Telephone Number/s** | [INSERT TELEPHONE NUMBERS, IF KNOWN] |
| **Fax Number** | [INSERT FAX NUMBERS, IF KNOWN] |
| **Email address** | [INSERT EMAIL ADDRESS, IF KNOWN] |

I confirm that I am the rights holder of the Work, and I authorise the [DEPARTMENT/SCHOOL], without payment and for the full term of the Work’s copyright, to copy and communicate the Work and make the Work available free of charge to schools and education departments around Australia for their educational purposes under the Creative Commons licence.

|  |  |
| --- | --- |
| Signature: |   |
| Date: |   |
| **Office Use Only****NOTE: this information must be stored on DoE WA HPRM or a school file.** |

1. copyright register

|  |  |
| --- | --- |
|  | ***THIRD PARTY COPYRIGHT MATERIALS LIST AND COPYRIGHT CLEARANCE DECLARATION******(Enter name of Directorate)* COPYRIGHT REGISTER****Copyright Owner: Department of Education of Western Australia**  |

***(Enter name of Branch)* Project Title: (*Enter name of project*) Project Code (*insert project code if applicable*)**

|  |  |  |  |  |  |  |
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# Use of aboriginal cultural and intellectual property

## Aboriginal Cultural Rights

In T Janke, *Our Culture: Our Future, Proposals for the Recognition and Protection of Indigenous Cultural and Intellectual Property*, (Discussion Paper) Michael Frankel and Company, July 1997 ‘Indigenous cultural and intellectual property’ was defined as referring to Aboriginal peoples’ rights to their heritage. Heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. Heritage includes:

* literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
* scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);
* all items of movable cultural property;
* human remains and tissues;
* immovable cultural property (including sacred and historically significant sites and burial grounds); and
* documentation of Aboriginal peoples’ heritage in archives, film, photographs, videotape, audiotape and all other forms of media.

Indigenous Cultural and Intellectual Property Rights (ICIPR) relates to a bundle of rights of indigenous peoples that protect their 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 Aboriginal communities are using non-legislative means such as contract 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 which has been passed through generations; and
* copyright is generally granted to the author and does not recognise communal or customary ownership of cultural heritage of Aboriginal tribes and clans.

## Negotiating with Aboriginal Communities

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

* Does your nominated Aboriginal 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 Aboriginal peoples and communities?
* Have you verified that the community understands the copyright issues of the project?
* Does your proposal safeguard Aboriginal sensibilities?

Proposals should demonstrate that:

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

The current State Government’s commitment to engaging with Aboriginal people is articulated in the National Indigenous Reform Agreement (NIRA) which refers to the importance of culture, engagement and partnership with Indigenous Australians, and sets out service delivery principals.

http://www.federalfinancialrelations.gov.au/content/npa/health\_indigenous/indigenous-reform/national-agreement\_sept\_12.pdf

There are also National Partnership Agreements that align with and commit to NIRA principals, such as the Overarching Bilateral Indigenous Plan (OBIP).

<http://www.federalfinancialrelations.gov.au/content/npa/health_indigenous/indigenous-reform/WA.pdf>

## Indigenous notice to advise of culturally sensitive content

In some Aboriginal and Torres Strait Islander communities, hearing the names, seeing pictures, or listening to recordings of deceased persons may cause sadness or distress. In other instances past practices may cause offence. Departmental products that contain such content, may be culturally sensitive, and not normally be used in certain public or community situations and should therefore contain a warning notice so that people are aware of this possibility before choosing to use and/or view the product.

**Suggested notice:**

The Department wishes to advise that this publication/website/video/program may cause distress to members of the Aboriginal and Torres Strait Island communities. It may contain images or voices of deceased persons.

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