

Intellectual property policy

POL-C-006

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1. Title

Intellectual property policy

2. Introduction

The National Museum of Australia (the Museum) is a major cultural institution charged with researching, collecting, preserving and exhibiting historical material of the Australian nation. The Museum focuses on the three interrelated areas of Aboriginal and Torres Strait Islander history and culture, Australia's history and society since European settlement in 1788 and the interaction of people with the environment.

Established in 1980, the Museum is a publicly funded institution governed as a statutory authority in the Commonwealth Arts portfolio. The Museum's building on Acton Peninsula, Canberra opened in March 2001.

3. Scope

3.1 Description

This policy sets out the rules applying to ownership, management, use, protection and disposal of rights to intellectual property (IP) developed or used wholly or partially as a result of activities performed for or on behalf of the Museum.

3.2 Objectives

3.2.1 The Intellectual Property Principles for Commonwealth Entities (the IP Principles) provide that Australian Government agencies are responsible for managing IP in their control or custody in an effective, efficient and ethical manner for the benefit of the Australian community as a whole.

3.2.2 In dealing with IP, the Museum aims to:

- a) ensure it is not prevented from using and providing access to collection items in which IP subsists for Museum purposes
- b) facilitate access to collection items by the public, in accordance with its functions under the *National Museum of Australia Act 1980* and within the scope of relevant copyright laws and licences
- c) foster and recognise research, scholarship and innovation capacity by Museum employees
- d) protect the Museum's IP, such as the Museum's brands
- e) avoid disputes that may damage the Museum's reputation and give rise to legal liability.

3.2.3 This policy aims to assist the Museum to achieve these objectives in a manner which complies with the IP Principles.

3.3 Rationale

The Museum is a publicly funded institution governed by the *National Museum of Australia Act 1980*. The Museum is also subject to the *Public Service Act 1999* and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The IP Principles are a good practice guide for the management of IP by agencies that are subject to the PGPA Act.

4 Application

4.1 Precedence

This policy will take precedence over all other related Museum policies and procedures in the event of inconsistency between any such policies and procedures and this policy.

4.2 Scope

4.2.1 This policy applies to:

a) IP that the Museum owns or licenses that:

- is recorded in, or otherwise subsists in materials recorded in, the Museum's collection database or other records management system
- is published by the Museum (including through National Museum of Australia Press or online publishing, as well as social media)
- is incorporated in or a component of commercial off-the-shelf (COTS) or non-COTS software used by the Museum
- forms part of the Museum's exhibition or program materials
- is part of the Museum's library collection
- is used to promote the Museum, its programs or activities

unless such IP is assessed as giving rise to an insignificant risk that the Museum may not achieve the objectives specified in section 3.2.2, and/or is valued at less than \$2000 ('Material IP').

b) All employees and contractor personnel of the Museum, unless otherwise agreed by the Museum.

c) Visiting research fellows, students, donors, vendors, lenders, borrowers and any other third-party contractors to the extent that this policy is invoked to apply to them.

4.3 Administration

4.3.1 The Museum has designated IP Managers to administer processes related to IP within the Museum.

4.3.2 IP Managers are responsible for implementation of this policy and will monitor the performance of actions and initiatives of their business unit.

4.4 IP policy statements — awareness, creation, acquisition and protection

4.4.1 Awareness of IP:

- a) Business unit managers are responsible for establishing and maintaining IP awareness initiatives that are relevant for their business units.
- b) The resourcing applied to IP awareness initiatives will take account of, and be balanced with, the benefits, risks and valuation of the IP held by the Museum.

4.4.2 Creation of IP:

- a) The Museum will, wherever possible, identify any Material IP that may have been created by or for the Museum arising from the performance of its functions and activities.
- b) The Museum will encourage the creation of IP by recognising and/or, where appropriate, acknowledging its personnel for their contribution to any innovation and creation of Material IP.
- c) All Material IP created, acquired or disposed of by the Museum should be notified to the relevant IP Manager(s) as soon as practically possible. Museum personnel should

provide to the relevant IP Manager(s) sufficient information as is reasonably necessary to enable the Museum to manage the IP that it holds.

- d) All Material IP will be recorded by the Museum in a manner that best enables the Museum to manage the material risks to its operations and efficiently and effectively manage its resources.
- e) The IP Managers are responsible for establishing systems to identify and record Material IP. Details to be recorded will include:
 - the ownership of IP
 - rights associated with the ownership and use of IP
 - restrictions on the Museum or other parties in relation to the use of IP
 - expiration of licences
 - costs associated with the use of IP.
- f) Museum employees are required to:
 - keep records of Material IP in relation to the activities of their business units accurate and up-to-date
 - retain copies of all documents associated with the creation, use, management and handling of Material IP in accordance with the Museum's Recordkeeping policy.

4.5 Assessing and valuing IP

4.5.1 The Museum will periodically review the IP that it holds to assess which of that IP is Material IP, as defined in this policy at section 5.

4.5.2 Valuation of IP:

- a) The Museum will value its IP if it is appropriate to do so for internal risk and asset management purposes.
- b) Valuation of IP should not be used as the sole or principal justification for commercialisation decisions concerning its IP.
- c) Justifications for commercialisation of IP should include reference to the public benefit and utility of that IP.
- d) The method for valuing IP held by the Museum must be in accordance with the applicable accounting standards or otherwise consistent with the purposes for which the IP is being valued.

4.6 Ownership of IP created by the Museum

4.6.1 IP created by an *employee* of the Museum in the course of his or her employment or otherwise created under the direction or control of the Museum should be owned by the Museum.

4.6.2 IP created by *contractor personnel* in the course of his or her engagement or otherwise created under the direction or control of the Museum should be owned by the Museum.

4.6.3 IP created by *visiting personnel* (such as volunteers, interns or research fellows) while at the Museum or otherwise under the direction or control of the Museum should be owned by the Museum.

4.6.4 Exceptions to 4.6.1–4.6.3 may be made including by contract or other arrangement, or otherwise approved in writing by a member of the Executive.

4.6.5 The Museum will consider appropriate forms of acknowledgement and recognition for the creation of Material IP under its direction or control, in accordance with any relevant terms of engagement.

4.7 Acquisition of IP from outside the Museum

4.7.1 The Museum will consider the following principles prior to acquisition of IP from outside the Museum:

- a) The Museum will be flexible in determining whether the Museum should own IP created by another person or organisation.
- b) The Museum will consider its needs before determining the nature and scope of rights to IP.
- c) The Museum will identify and address its IP requirements as part of its procurement or acquisition processes.

4.7.2 In the course of assessing its requirements to own or license IP, the Museum will take into account:

- a) the risks to the Museum if it did not own the IP or it is unable to identify the scope of rights it may require in the future
- b) the costs to the Museum of owning the IP compared to licensing that IP
- c) whether it is appropriate for the Museum, having regard to its core functions and the IP Principles, to control the IP in the manner contemplated.

4.8 Protection of IP

The Museum should seek to formally protect its IP, such as by registration of trademarks, if:

- a) such protection will:
 - better enable the Museum to manage the material risks to its operations
 - not involve costs that outweigh the benefits to the Museum and/or
 - enable the Museum to achieve its IP related objectives
- b) the Museum has the resources to manage that protected IP on an ongoing basis, including any enforcement of that IP
- c) the Museum has obtained appropriate expert advice concerning the prospects of successfully protecting that IP.

4.9 Use of another person's IP

4.9.1 The Museum's use of IP owned by another person:

- a) must be consistent with the legal rights granted or otherwise available to the Museum
- b) must be undertaken in an effective, efficient and ethical manner
- c) should be consistent with the needs analysis undertaken by the Museum including being able to use the IP to carry out its functions and to manage its collections, exhibitions and programs
- d) should be consistent with any relevant industry standards or policies in relation to the use of IP
- e) should be undertaken in a manner that respects the cultural traditions of Indigenous communities, and in accordance with the Museum's Indigenous cultural rights and engagement policy
- f) should respect the creator's moral rights in a manner that is consistent with the *Copyright Act 1968*
- g) should be supported by appropriate documentation including contractual or licensing documentation.

4.9.2 The fees or costs paid by the Museum to use another person's IP should:

- a) represent value for money
- b) be determined, where appropriate, in accordance with any applicable industry standards or licensing agreements.

4.10 Use of the Museum's IP

- 4.10.1 The Museum may permit others to use the Museum's IP provided such use respects the creator's moral rights in a manner that is consistent with the *Copyright Act 1968* and any other relevant rights and is compatible with the Museum's functions.
- 4.10.2 Use of the Museum's IP by another person should be supported by appropriate licensing documentation.
- 4.10.3 Subject to section 4.13, the Museum will determine on a case-by-case basis whether to charge a fee for the use of its own IP.
- 4.10.4 Exclusive licence to use the Museum's IP should only be given in exceptional circumstances, and with the written approval of a member of the Museum's Executive Management.
- 4.10.5 The Museum will encourage public use of and easy access to copyright material that has been published for the purpose of:
- a) informing and advising the public of the Museum's activities and collection
 - b) facilitating access to the Museum's collection
 - c) delivering education and outreach programs in accordance with the Museum's functions.
- 4.10.6 Permission for public use should be granted through creative commons or other open source licences, where appropriate.
- 4.10.7 The Museum will consider opportunities to share IP for which it is responsible with other government agencies.
- If the Museum procures IP on the basis that it may be shared with other Australian Government agencies, then the Museum should make this clear to potential suppliers in the procurement process.

4.11 Record of rights and obligations

The Museum will record the rights and obligations of rights in Material IP that it acquires and grants.

4.12 Museum brand

The use of the Museum's brand (including the logo) by the Museum and any other person with whom the Museum deals must be in accordance with the Museum's style guide. Approval from the relevant IP Manager must be obtained prior to any use of the Museum's brand that does not comply with these requirements.

4.13 Commercialisation of IP

- 4.13.1 The Museum will, from time to time in the performance of its functions, seek revenue in return for the use of IP held by the Museum. This may include, but not be limited to, publishing, merchandising and sponsorship activities.
- 4.13.2 The Museum's approach to such activities will be consistent with the following principles:
- a) The Museum will act consistently with industry and market practice applicable to a national cultural institution.
 - b) The Museum should be responsive to opportunities for commercial use of its IP, including by the private sector.
 - c) The Museum will conduct such commercial activities in accordance with its priorities as set out in its Strategic Plan and Corporate Plan.
 - d) Where IP is commercialised or disposed of, the Museum will act in an accountable manner consistent with Australian Government legislation, policies and guidelines.
 - e) Commercialisation of Museum IP must consider the potential impact on industry competition from such an activity.

- 4.13.3 Any decision to commercialise the Museum's IP must comply with this policy and be approved in writing by a member of the Museum's Executive.

4.14 IP infringement

- 4.14.1 The Museum will manage the risk of infringing another person's IP by:

- a) establishing and maintaining an IP awareness program
- b) wherever practically possible, taking preventive steps to avoid infringing IP before:
 - implementing a new program, exhibition or activity
 - adopting a new logo, brand or name/title
 - developing new products or merchandise
- c) if it becomes aware or is notified of a claim of IP infringement, immediately notifying the Manager, Legal Services of the alleged IP infringement or claim, who will manage the claim in accordance with the Commonwealth Legal Service Directions, and notify Comcover, as appropriate
- d) in consultation with the Manager, Legal Services, seeking expert legal and other professional advice where necessary.

- 4.14.2 If the Museum receives notice or becomes aware that the Museum's IP may have been infringed, it will manage such a claim by immediately notifying the Manager, Legal Services of any alleged IP infringement, who may:

- a) seek expert legal and other professional advice, where necessary
- b) manage the claim in accordance with the Commonwealth Legal Service Directions
- c) notify Comcover, as appropriate.

4.15 Disposal of Museum IP

- 4.15.1 Material IP of the Museum should only be assigned or otherwise disposed of if:

- a) it is no longer necessary to enable the Museum to achieve its IP-related objectives or perform its functions
- b) another person is better placed to utilise the IP and ownership by that person of the IP will not adversely affect the Museum.

- 4.15.2 The Museum must consider any ongoing rights in the IP that it may require before disposing of that IP.

- 4.15.3 All disposals of Material IP owned by the Museum must be recorded in writing and the relevant IP Manager(s) must be notified.

- 4.15.4 In disposing of Material IP, or any records relating to it, the Museum will manage the activity in accordance with:

- a) the *National Museum of Australia Act 1980* and applicable Museum policies and procedures
- b) the *Archives Act 1983*
- c) any contractual restrictions relating to the relevant IP
- d) any other legal requirements.

- 4.15.5 Any disposal of Material IP owned by the Museum must be approved in accordance with the Museum's asset management guidelines and procedures.

5. Definition of terms

Confidential information

Information that is by its nature confidential or a party knows or ought to know is confidential but does not include information which is or becomes public knowledge other than by breach of any confidentiality obligation.

Indigenous cultural rights and engagement (ICRE) policy

The Museum's Indigenous cultural rights and engagement policy, which recognises Indigenous Cultural and Intellectual Property (ICIP), and sets out principles which guide how the Museum engages with Indigenous stakeholders about these rights.

Intellectual property (IP)

All intellectual property rights, including but not limited to:

- a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names
- b) any application or right to apply for registration of any of the rights referred to in paragraph a)
- c) all rights of a similar nature to any of the rights in paragraphs a) and b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

IP Manager(s)

The person(s) responsible for the management and implementation of this policy, as designated by the Museum in section 6 of this policy.

IP Principles

The Intellectual Property Principles for Commonwealth Entities released by the Australian Government in June 2018 and amended from time to time (IP Principles).

Material IP

IP which meets one or more of the criteria listed in section 3.3.1 of this policy.

Policy

This Intellectual Property policy document, as updated by the Museum from time to time.

6. Definition of responsibilities

IP Managers

The Museum has designated the following officers (IP Managers) to administer processes related to IP within the Museum.

Director or Deputy Director

Responsible for the overall application of the IP Policy and coordination of IP management and implementation in the Museum.

Manager, Legal Services

Responsible for advice and interpretation of the IP policy.

Team Leader, Copyright Services, Collection Development and Information

Responsible for copyright clearances and licences, in consultation with the Manager, Legal Services where necessary.

Manager, Communications Marketing and Public Affairs

Responsible for ensuring compliance of social media, promotional and advertising activities with the IP policy, including all uses of the Museum's brand.

Manager, Publishing

Responsible for ensuring compliance of National Museum of Australia Press publications with the IP policy.

Business unit managers

Responsible for ensuring awareness of, and compliance with, the IP policy in relation to the work of their business units.

Executive Management

Includes the Museums' Director, Deputy Director and Assistant Directors.

All Museum staff

Required to assist their business units and the IP Managers to keep Material IP records up to date and accurate.

7. References

ANAO IP Policies in Government Agencies — Audit Report no. 25 (2004), https://www.anao.gov.au/sites/default/files/anao_report_2003-2004_25.pdf and later report at https://www.anao.gov.au/sites/default/files/ANAO_Report_2006-2007_22.pdf

Commonwealth Procurement Rules

Department of Infrastructure, Transport, Regional Development and Communications, *Australian Government Intellectual Property Manual*, 2018, <https://www.communications.gov.au/documents/australian-government-intellectual-property-manual-0>

Department of Infrastructure, Transport, Regional Development and Communications, *Intellectual Property principles for Commonwealth entities*, 2018, <https://www.communications.gov.au/documents/intellectual-property-principles-commonwealth-entities>

Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions

Public Governance, Performance and Accountability Act 2013

National Museum of Australia Act 1980

World Intellectual Property Organisation, *Guide on Managing Intellectual Property for Museums*, 2013, <https://www.wipo.int/publications/en/details.jsp?id=166>

8. Implementation

This policy will be implemented by the Deputy Director, with assistance from the Manager, Legal Services and other IP Managers.

8.1 Coverage

This policy applies to:

- a) Material IP that the Museum owns or licenses
- b) all employees and contractor personnel of the Museum

- c) visiting research fellows, students, donors, vendors, lenders, borrowers and any other third-party contractors to the extent that this policy is invoked to apply to them.

8.2 Other related policies

Asset management guidelines

Collections development policy

Digital preservation and digitisation policy

Indigenous cultural rights and engagement policy

Online content and participation policy

Publishing policy

Research and scholarship policy

Recordkeeping policy

Sponsorship and grant policy

8.3 Exclusions

This policy does not apply to IP which does not meet the definition or criteria for Material IP.

8.4 Superseded policies

This policy supersedes:

Former policy title	Version number	Version date	Council approval date
Intellectual property	1.0	21 Dec 2009	7 May 2009
Intellectual property	2.0	2 Mar 2012	NA

8.5 Monitoring

This policy will be monitored by the Deputy Director in consultation with the IP Managers.

This policy will be reviewed in June 2023.