

Intellectual Property Policy



New South Wales
Crime Commission

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1. Objective

This policy outlines how the New South Wales Crime Commission (the Commission) manages its Intellectual Property (IP), and meets the requirements set out in the *Intellectual Property Management Framework for the NSW Public Sector* (the NSW Public Sector IP Framework)¹.

2. Scope/Application

This policy is binding on all Commission employees.

3. Definitions

Copyright	'copyright' a legal protection which gives an owner exclusive rights to license others to copy, perform in public, communicate, publish, or make an adaptation of their work.
IP	refers to what can be legally owned as the product of intellectual activity in the industrial, scientific, literary, artistic, musical and dramatic fields.
Moral rights	refers to rights relating to authors' or creators' reputations in relation to their work.
Patent	refers to a right granted for a specified period in relation to a device, substance, method or process which is new, inventive and useful.
Significant IP	IP that: <ul style="list-style-type: none"> • the Commission must keep a record of; • costs over a certain amount to generate (as determined by the Commission); • is worth over a certain amount to the Commission; • the cost to the Commission of losing the IP and the cost of alternatives; • is valuable to the Commission in non-monetary terms, e.g., reputation of the Commission could be at risk or the integrity of the IP needs to be protected; and • plays an important role in the Commission's operations.

4. Policy Statements

The NSW Public Sector IP Framework contains a set of IP principles, which the Commission is required to incorporate into its policy. These principles are further detailed below.

4.1 Commission IP and confidentiality

Any IP created by Commission employees is legally owned by the Commission on behalf of the NSW Government. All Commission IP is confidential and Commission staff are not authorised to use and/or disclose Commission IP unless authorised by the Commissioner. Any unauthorised disclosure and/or use may breach legislative and contractual provisions, as well as potentially destroy the commercial value of the IP asset. All Commission employees are

¹ 2005, Department of Premier and Cabinet. Available here: <https://arp.nsw.gov.au/c2005-06-intellectual-property-management-framework-nsw-public-sector>.

responsible for properly identifying and protecting the IP of the Commission. Moral rights generally belong to the creator of the material unless there is a specific agreement to the contrary.

In addition to the Commission's IP restrictions, Commission employees are also subject to the usual privacy and confidentiality restrictions imposed on staff members governing the disclosure and use of information, as well as the secrecy provisions set out in section 80 of the *Crime Commission Act 2012* (NSW).

4.2 Significant Commission IP to be recorded

Due to the nature of the Commission's work, it is unlikely that any significant IP will be created, owned, used or controlled by the Commission.

Generally, however, the following types of significant IP is common in government agencies and may apply to the Commission:

- publications sold or provided free of charge;
- databases maintained by the Commission;
- computer programs developed for the Commission where the development or replacement cost exceeds \$20,000;
- training materials developed by the Commission where the development or replacement cost exceeds \$20,000; and
- patented inventions or registered designs that are purchased by the Commission, or for which the Commission buys a licence.

IP rights are created in different ways, depending on the category. Copyright is automatic and does not require registration. For trademarks, registration is not compulsory but is advisable. Common law provides protection against the infringement of trade secrets and for breach of confidentiality agreements.

4.3 Identification and recording of Commission IP

The Chief Operating Officer, maintains an IP Register² to identify and record significant IP owned, controlled or in use by the Commission.

The following information should be recorded on the IP Register:

- a description and location of the IP, and ownership details;
- the involvement of contractors or consultants in the development of the IP, and the IP details or clauses in the contract;
- the names of Commission officers responsible for the IP;
- any IP related rights issues, e.g., protection status and expiry date;
- any current or potential risks related to the IP;
- in cases where the Commission has a licence to use someone else's IP: details of the licence, owner of the licence, expiry date and payments; and
- arrangements for the review of the IP, as and where appropriate or required.

² See **Annexure "A"** for the Commission's IP Register template.

The Commission also retains copies of relevant documentation, including for example, license agreements and other contractual arrangements entered into with third parties, in the appropriate files within its record-keeping system.

Commission employees should report any relevant IP issues to the Chief Operating Officer, including any of the following:

- infringement of any Commission IP;
- infringement by the Commission of any other agency's IP; and
- the proposed sale or disposal of Commission IP.

How these issues will be resolved will depend on legal, financial, and commercial advice, which will be sought on a case-by-case basis, as required.

4.4 Commercialisation of Commission IP

IP must be considered in contract negotiations for procurement activities. Contract agreements must clearly state the agreed terms of IP ownership, licenses, fees payable, expiration dates, and so on. Where there is an Intellectual Property component in a procurement activity, agreement needs to be made early in contract negotiations on who owns that IP, and that determination plus any associated costs included into the contract.

Any decisions by the Commission to commercialise its IP must be made on the basis of appropriate legal, financial, and commercial IP advice.

4.5 Publication of information regarding Commission IP

The Commission ensures employees are aware of this policy by publishing a copy of it on its intranet. The Commission also encourages general awareness of the policy by making it publicly available on its external website to members of the public.

The Commission makes available policies and procedures, and information, on its external website in accordance with its obligations under the applicable government information access legislation. The Commission takes active steps to ensure that such publications do not breach confidentiality, privacy rights or any other third party IP rights.

Version control

Version	Effective date	Update comments	Author
1.00	17 March 2015	Policy and procedure document established	NSW Crime Commission
2.00	1 May 2020	Policy substantially revised and procedure portion of document removed.	Governance Team

Publication information

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Description of the IP	Location of the IP	Who owns the IP/involvement of any contractors or consultants	Commission officer responsible for the IP	Protection status and expiry date	Current or potential risks	Details of any applicable licence				Review arrangements
						What the licence covers	Licence owner	Payments	Expiry date	