Queensland Public Sector

Intellectual Property Principles

Version 2

Great state. Great opportunity.

Queensland Government

Last reviewed by DSITIA January 2013

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Contents

Introduction

The Queensland Public Sector Intellectual Property Principles (IP Principles), together with the information licensing framework known at the national level as the Australian Governments Open Access Licensing Framework – AusGOAL (formerly the Queensland Government Information Licensing Framework (GILF)), provide the high level policy guide for the management of intellectual property by Queensland Government agencies.

Intellectual Property (IP) covers the wide range of intangible property that is the result of investment in the creative and intellectual effort of individuals and organisations. Government copyright protected information has many forms, including public sector information, literary and artistic works, computer programs, databases, film and sound recordings; along with intellectual property in inventions, plant breeder's rights, circuit layouts, trade marks, and designs.

Each government agency is responsible for effectively managing the IP assets it develops, owns or uses. IP is a significant resource and a valuable intangible asset. The effective management of public sector IP offers direct and indirect benefits to the community in a number of ways including:

- knowledge diffusion and its application by other agencies, business organisations and individuals
- commercial products developed by the private and public sectors
- input into improved or new public sector products and services
- input into the development of potential
- commercial products that produce positive net revenue returns to Queenslanders.

The IP Principles identify and encourage best practice for the creation, record keeping, use, sharing, protection, dissemination and commercialisation of IP. The IP Principles aim to assist agencies to determine when professional (legal, financial and commercial) advice about IP should be sought.

The content of the IP Principles is intended to provide a guide only; it does not constitute legal or specialist advice, and is not a definitive resource for all IP management issues.

IP in the Queensland Government

The Queensland Government first endorsed the IP Policy Framework (IP Framework) in 2003 and established the IP Principles.

The IP Framework provides high level guidance and mechanisms to assist agencies manage their IP. The framework also provides guidance to those agencies that are likely to develop IP with commercial potential, including Queensland Health, the Department of Science, Information Technology, Innovation and the Arts (DSITIA), the Department of Agriculture, Fisheries and Forestry (DAFF), the Department of Environment and Heritage Protection (DEHP), the Department of Education, Training and Employment (DETE), and the Department of Transport and Main Roads.

The IP Framework elements are:

- IP Principles (incorporating the IP assessment guide)
- 'Rewards for Creating Commercially Valuable Intellectual Property' Directive (Rewards Directive)
- online IP training modules.

Due to the diverse nature of agency activities, the types of IP managed and the extent to which IP is critical to an agency's core business, IP strategies will differ among agencies and also within an agency.

These IP Principles have relevance to public sector IP ranging from non-confidential copyright such as reports and spatial (raw data) information through to the protection of new health or agricultural products and processes that may have commercial potential.

The IP Principles:

- provide high-level policy advice rather than step-by-step guidance on IP management and commercialisation
- acknowledge the diversity of functions, circumstances and requirements of agencies across Government, and encourage implementation in accordance with an agency's own particular needs and objectives
- reflect Government policy decisions in relation to the introduction of the Queensland Government right to information (RTI) legislation and a consistent information licensing framework (known nationally as AusGOAL).

'Open Government' developments

Since 2003, developments in open government information management policies and processes at the state, national and international level have changed the environment for public sector management (including licensing and commercialisation) of IP.

The Australian Government has advocated a more open information environment evident by its Declaration of 'Open Government';[1] its endorsement in the Australian Government *Statement of IP Principles for Australian Government Agencies*[2] in 2010; and the adoption of Web 2.0 portal technology[3] to enhance connectivity and interaction – information sharing.

The most significant open access developments in the Queensland Government are:

- the *Right To Information Act 2009* (Qld) (RTI), which establishes, as a default position, the proactive release of public sector information into the public sphere ('push' disclosure model) unless the release of this information is determined, via a 'public interest' assessment, to be against the public interest
- the Government Information Licensing Framework (GILF) policy, position and guideline introduced under the Queensland Government Enterprise Architecture (QGEA) in 2010. Details of GILF, now known as AusGOAL at the national level and referred to as AusGOAL, in these Principles, are available on the Queensland Government Chief Information Office website (www.qgcio.qld.gov.au)

  AusGOAL is an online licensing framework that government departments use to grade and selectively license their copyright and other IP information using six Creative Commons licences and one Restrictive Licence (RL) template made available on the AusGOAL website (www.ausgoal.gov.au) For further details refer to the Creative Commons Australia website (http://creativecommons.org.au/)

Broad policy guidance for agency IP management

The IP Principles together with AusGOAL, the QGEA Information Standards and relevant legislation provide the broad policies and standards guiding IP management in Queensland Government agencies.

The IP Principles are mandatory for all Queensland Government agencies and are the key elements of effective IP management in the public sector. Although Government owned corporations and public trading enterprises are not required to apply the IP Framework, they are encouraged to apply the IP Principles.

Agencies are encouraged to develop individual IP policies that reflect their own needs and objectives, consistent with relevant government policies and requirements.

Agencies are responsible for the management of IP assets owned or used by the agency, in a publicly accountable manner, in accordance with relevant legislation, policies and guidelines.

Agencies should consider other IP and information policies for matters that impact on their IP management. These frameworks include:

- the QGEA managed by the Queensland Government Chief Information Office for the licensing of government public sector information under AusGOAL and related Information Standards (e.g. Information Standard 33)
- the RTI – agencies should ensure that all personnel involved in the development, licensing and commercialisation of IP understand the implications of the proactive release of government information (which includes copyright and other IP) to the public under the *Right to Information Act 2009* (Qld)
- the *Financial Accountability Act 2009* (Qld)
- the Commonwealth of Australia IP legislative framework - *Circuit Layouts Act 1989* (Cth), *Copyright Act 1968* (Cth), *Designs Act 2003* (Cth), *Patents Act 1990* (Cth), *Plant Breeder's Rights Act 1994* (Cth), and *Trade Marks Act 1995* (Cth).

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[1] Endorsing the central recommendation of the Government 2.0 Taskforce's report that the Australian Government makes a declaration of open government. See http://www.finance.gov.au/e- government/strategy-and-governance/gov2.html

[2] The Statement provides a framework for effective management of intellectual property ('IP') by Australian Government agencies. See http://www.ag.gov.au/RightsAndProtections/IntellectualProperty/Documents/StatementofIPprinciplesforAusGovagencies.pdf

[3] See Government 2.0 Taskforce's final report, *Engage: Getting on with Government 2.0*, delivered to the Australian Government on 22 December 2009. See http://www.finance.gov.au/e-government/strategy-and-governance/gov2.html

General principles

1.1 Responsibility

Management of IP should be a priority within agencies and assigned to a senior officer with appropriate skills and knowledge.

Agencies should communicate the IP Principles to staff as part of each agency's IP implementation strategy.

1.2 Implementation of the IP Framework

Agencies should develop an agency specific IP management policy, which supports their core functions and service delivery outcomes. This agency specific policy should reflect:

- their obligations under the IP Principles
- the nature of the IP for which the agency is responsible
- the reporting requirements of the agency, i.e. compliance with financial standards and their statutory and policy obligations in relation to their IP assets under their control.

An agency's IP management policy should be incorporated into the agency's planning, systems and policies.

Agencies should adopt a risk management approach when implementing the IP Principles and allocate appropriate resources to manage risks by:

- maintaining and regularly reviewing their IP management system
- establishing rigorous IP record keeping
- protecting IP rights
- minimising infringement risk
- using IP assets to enhance service delivery.

As part of their management policy, agencies should establish procedures in relation to managing the IP content in their publications and websites and online dissemination including licensing of Government information as required under AusGOAL.

Agencies should take appropriate steps to identify, secure, preserve, maintain, and advertise the availability of open content Creative Commons licensing opportunities for Government public sector information and where appropriate, apply restrictive licensing for IP that offers potential commercial returns.

Agencies should consider broader government objectives, including the benefit to the community as a whole in their approach to the management and use of their copyright and other IP.

1.3 Creative Commons licensing of government copyright information

In assisting agencies to decide the appropriate licence to apply to public information, AusGOAL and relevant QGEA Information Standards provide that :

(a) agencies license their public sector copyright information using the Creative Commons least restrictive licence (i.e. the CC Attribution BY licence) as the default licence of preference following a process of due diligence assessment on a case-by-case basis. However this least restrictive licence may not always be the appropriate licence to use (see (b) below).

This licence includes public sector information, which agencies are generally obliged to publish or otherwise allow free public access for the purpose of:

- informing and advising the public of government policy and activities
- providing information that will enable the
- public and organisations to understand their own obligations and responsibilities to government
- enabling the public and organisations to
- understand their entitlements to government assistance
- facilitating access to government services
- complying with public accountability requirements.

(b) agencies only depart from the least restrictive Creative Commons licensing default position in circumstances where it is in the pubic interest to restrict access to that information.

For example, restriction may be appropriate in circumstances where:

- the IP is of commercial value or potential commercial value
- an exclusive licence or other contractual terms are appropriate for reasons of national security and/or strategic interest
- there are reasons of law enforcement
- there are statutes, regulations, Commonwealth Government policies or prior obligations to a third party or parties
- the IP applies to a critical government ICT system
- the IP includes personal information
- there are protected matters relating to fraud detection and return processing rules

- complex information technology assets involve multiple build partners over the asset lifecycle
- the underlying IP is wholly or
- predominantly owned by the Government before entering into a service agreement
- there are economic and financial risks.

A Creative Commons licence should be used to avoid the necessity of the public having to seek permission for public use and re-use of Crown copyright material. It facilitates the use of copyright where there is no reason or necessity to restrict access.

Before releasing public sector information, for which the Government is not the sole copyright owner, under a Creative Commons standard licence, an agency must seek permission/clearance from any other copyright owners of the material.

It is important for agencies to choose the appropriate licence for the release or restriction of their copyright material. There are six Creative Commons licences and one Restrictive Licence to choose from, at www.ausgoal.gov.au. The IP assessment guide provides further assistance on licensing selection.

1.4 Creative Commons licensing of Queensland records

Queensland records that become available for public access under the *Public Records Act 2002* should be licensed using the appropriate Creative Commons open content licence. Agencies will be responsible for the selection and use of the appropriate licence (in accordance with AusGOAL).

1.5 Sharing IP within government

Government agencies should consider opportunities to share their IP with other agencies. Where there is an expectation that procured IP will be used by other Queensland Government agencies, agencies should make this clear to potential suppliers during the procurement process.

1.6 Maintaining a flexible approach

In considering options for managing (and releasing) IP, agencies should be mindful of:

- their objectives and breadth of activities
- opportunities for obtaining appropriate value in all IP arrangements
- opportunities for financial savings in procurement contracts. Savings may include purchasing/negotiating only those IP rights required to meet the objectives of the procurement, e.g. use of software
- the costs of managing and administering IP
- assets retained by agencies and the potential for some IP assets to rapidly depreciate in value
- the desirability of making IP available to
- entities that are able to use government IP to create jobs and commercial opportunities
- other relevant government policy objectives, including industry development.

1.7 Rewards and recognition

An effective rewards and/or recognition policy (for employees) offers a means to support improved IP management. This process can be linked to human resource performance management systems or other mechanisms which recognise and reward contributions to the achievement of agency objectives. The rewards and recognition policy can be separate and distinct from the monetary rewards criteria made available to staff who commercialise IP for monetary return under the 'Rewards for Creating Commercially Valuable Intellectual Property' Directive.[4]

[4] The Rewards Directive issued by gazettal notice in March 2007, provides the process to be followed by agencies to assist in recognising and rewarding employees who create commercially valuable IP. The Rewards Directive is administered by PSC and DJAG under the *Public Service Act 2008*.

Management principles

2.1 IP management policy

Each agency should have an IP management policy which reflects its objectives and IP Principles. Policies and practices established for the management and use of IP should be an integral part of agencies' broader governance framework, including procurement, accountability, and records and asset management.

An IP management policy should guide staff to:

- deal with record keeping, acquisition, use, sharing, commercialisation, disposal, and public access to IP
- identify and record ownership of IP
- monitor and protect IP
- develop an IP pathway where IP has commercialisation potential.

It should also detail any broader policy considerations that affect the agency's approach to management and use of IP.

2.2 Implementation of the IP management policy

The implementation of an agency's IP management policy should be supported by expert guidance and appropriate training and resources.

- **Professional advice**: Due to the complex nature of IP rights, agencies should seek advice from suitably qualified lawyers, patent attorneys or other consultants where appropriate in-house or in-government expertise is unavailable. This advice is especially required for the commercialisation of IP.
- **Training**: Agencies should provide appropriate training to staff on IP related issues, and ensure staff with adequate skills and knowledge manage their IP assets.

2.3 Identification and recording of IP

Identifying and recording IP may be achieved effectively through maintaining log books (particularly in the case of research and laboratory work) and an agency's dedicated IP register. Agencies should pay particular attention to IP they have identified as being of special value or importance, including copyright information with potential commercial applications, e.g. records and documentation for a patentable invention.

Important IP could include IP which is of public, strategic, innovative or potential financial value.

2.4 Disclosure of IP

Agencies should take care in disclosing their IP to a third party or parties prior to its publication or commercialisation as to do so may:

- in some cases destroy the IP asset's commercial value; and/or
- in the case of patentable subject matter or a design, the opportunity to seek registration may be lost.

2.5 Infringement of an agency's IP

Where appropriate, Chief Executive Officers should seek legal advice as soon as any suspected infringement of an agency's IP is discovered and take such action as is reasonably necessary to protect the agency's interests.

2.6 Avoidance of the infringement of others' IP rights

Agencies should avoid infringing the IP rights of other people or organisations. Where relevant and necessary, agencies should obtain copyright authorisation and conduct trademark and business name searches, patent and design searches.

2.7 Ownership and control of IP

The ownership and protection of IP should be specifically addressed in all circumstances of potential commercial returns to the agency. Details should stipulate who legally owns the IP and include areas such as employment, grants, procurement, consulting, licensing, contracting and commercialisation. This is of particular importance in determining ownership of inventions and authorship for copyright works, especially for agencies involved in scientific research. Maintaining accurate records and research/laboratory log books are integral to this process.

Agencies should take reasonable steps to ensure that Queensland has the best opportunity to benefit from IP whether by way of ownership, licence or other entitlement, whether the IP rights are vested in an agency or shared with a third party.

Agencies must consider and address ownership of IP where commercially valuable IP is created as a result of employment or in relation to a contractor or outside consultant. In particular, agencies should be aware that 'duty to research' does not

automatically imply a 'duty to invent', which needs to be expressly stipulated and managed contractually.

2.7.1 Ownership of IP created by a consultant

When engaging a consultant, agencies should explore whether ownership by the agency of IP developed by the contractor/consultant on behalf of the Queensland Government ('the default position') is the best option for maximising benefits to Queensland.

An agency may agree to a consultant retaining the ownership of some or all of the IP rights created by the consultant during the course of the contract. This may be permissible if other public interests, such as supporting Queensland industry or enabling or facilitating the more efficient delivery of services are considered to be of greater benefit to the public than the retention of ownership of IP by the agency or the State.

Where an agency agrees to a consultant/contractor retaining ownership of some or all of the IP rights created by the consultant, the agency must ensure the Queensland Government retains appropriate access, use and maintenance of outputs that it has paid for.

2.7.2 Joint ownership of IP

Where an agency agrees to joint ownership of IP, the contract should contain appropriate provisions relating to the use, management, commercialisation and administration of IP assets.

2.7.3 Identification of IP created in the course of employment or engagement

All agencies should introduce mechanisms to identify, record and clarify government's ownership of IP generated by public sector employees or consultants in the course of their duties. All contracts in which IP might be created (including outsourcing, consulting and contracting agreements) should specifically address the issues of pre-existing IP and IP to be created during the contract.

Contracts in which IP might be created should address the identification of new and pre-existing IP and the arrangements that apply to the ownership and use of the IP, including licensing arrangements.

2.7.4 Procurement of IP by agencies

When procuring an IP asset (whether such asset is already in existence or yet to be created), an agency should endeavour to obtain such ownership or licensing rights as are consistent with its procurement objectives.

2.7.5 ICT contracts for software

In respect of the Government Information and Technology Contracts (GITC) for software, agencies may give consideration to the adoption of a default position in favour of the Information and Communication Technologies (ICT) supplier owning the IP in the software developed under the procurement contract.

The default ownership position would be conditional on the ICT supplier granting the Queensland Government a perpetual, irrevocable, world-wide (if required), royalty-free, fully paid up licence to all rights normally accompanying IP ownership. This may include a right to sub-license and where appropriate, a non-exclusive right to commercialise as part of this government activity.

Commercialisation principles

3.1 Key consideration

Most agencies may have IP that is of value to other users. However, only a small number of agencies, and limited areas of activity in those agencies, will have IP that offers potential, direct commercial benefit to the government.

In making decisions about licensing and other commercialisation of IP, the agency must be satisfied that Queensland is obtaining the maximum benefit. In some cases this will mean commercialisation decisions that will depart from the (Creative Commons) default position, e.g. transfer, exclusive licensing or access restrictions.

When developing a plan to manage the commercialisation of IP, the agency should consider its core functions and service delivery obligations under the IP Framework.

If a core function is to disseminate policy and public sector information, it may be the agency's policy to emphasise open government Creative Commons' licensing choices rather than restrictive licence exceptions.

Where an agency's core function is to invest public funds in research and development, its policy must stipulate stringent requirements for commercial IP including due diligence, record keeping, auditing, and approval delegations for release and specified review dates.

3.2 IP Pathway - assessment of value and risks

Before commercialising IP, an agency should conduct an assessment of the commercial potential of the asset and all costs and risks associated with its commercialisation.

Where an agency has obtained funding to support R&D projects, the agency should prepare an IP plan (pathway) to demonstrate how the IP will be protected, commercialised and managed.

3.3 Commercialise for the benefit of the State

An IP asset will be commercially valuable to the agency if the agency can raise revenue from the sale or licensing of certain rights to a third party. Equally, an IP asset will be operationally valuable if it plays an important role in the operations or services provided by the agency.

Agencies should endeavour to commercialise IP assets owned or managed by the agency for the benefit of the State. Commercialisation of IP should not proceed if it would significantly interfere with or would cause detriment to the agency's operational activities or service delivery.

3.4 Minimisation of risks

Agencies should minimise the risks associated with the use of IP assets and endeavour to commercialise such assets in a manner which does not expose the agency or the State to unnecessary or disproportionate risks. In the case of commercialisation agreements, this may involve ensuring that any warranties are appropriate and that legal agreements include liability caps or indemnities from liability.

3.5 Commercial expertise – threshold considerations

As a general rule, commercialisation of IP should be carried out with the assistance of another party with appropriate IP skills and expertise.

3.6 Queensland or Australian commercial 'partner'

When selecting a commercial 'partner', such as a head licensee or distributor to commercialise an IP asset, agencies should, where practicable, select a Queensland or an Australian owned enterprise.

3.7 Revenue from commercialisation

As part of the commercialisation process of an IP asset, the agency should consider the impact of IP revenue in accordance with its obligations under the agency's financial management practice manual, Queensland Treasury policies, and relevant legislation.

3.8 Disposal or licensing out of IP assets

When agencies sell, dispose of or license their IP assets they should attempt to obtain the best deal for Queensland and should do so in an open, accountable and competitive manner in order to obtain maximum value for the investment.

IP assessment guide

A. IP assessment

The IP Principles (version 2) address the new open access environment created by the Right to Information (RTI) legislation and the release of the Government Information Licensing Framework (GILF) policy, position, and guideline in 2010. GILF has been adopted nationally as AusGOAL, a name that reflects its national focus. In 2012 QGEA's GILF-related documents on the Queensland Government Chief Information Office website (www.qgcio.qld.gov.au) were updated to refer to the AusGOAL framework.

The AusGOAL framework provides guidance to enable departments to license their public sector information where appropriate by selecting from:

- six Australian Creative Commons[5] (CC) licences
- one Restrictive Licence[6] (RL) template.

Copyright protected information (copyright information) comprises the majority of public sector information, which includes information generated by or for departments in the Queensland Government. Copyright – a type of intellectual property (IP) – arises at the point the information is expressed in a material form.

AusGOAL provides that departments should license their copyright information using the Creative Commons BY Attribution (CC BY) licence – the least restrictive of the six CC licences – as the default licence, unless there are circumstances requiring the use of one of the other CC licences or the RL template or another arrangement.

The CC BY or other CC licences will be able to be used by departments for the majority of their copyright information. The majority of copyright has no commercial IP value, but it is necessary to remove all confidential or private information before licensing.

To address cases in which the CC licences are not appropriate, AusGOAL also provides the RL template of standard terms and a schedule for departments to use in negotiating a restrictive, contractual licence for the protection of confidential (including commercial-in-confidence) information and IP which has been commercialised or has commercial potential.

For example, copyright and commercial-in-confidence information may inform the development of IP that has potential commercial value (e.g. a document pertaining to a trademark, design, patent, or plant breeder's rights). This copyright information may need to be kept protected, to the appropriate extent and duration, by using a contractual restrictive licence negotiated on the basis of the RL template.

A pre-condition to licensing copyright information is to establish copyright ownership by departments or the legal entitlement to license that public sector information.

The following material provides a broad guide to assist in licensing copyright information under AusGOAL and also provides broad guidance in IP commercialisation.

These are steps for agencies to follow in assessing public sector IP:

Step 1: Define the type of IP

For the purposes of decision making in managing IP, IP is a generic term referring to the select sets of intangible property rights which the law grants for a number of years to a person or employer for their novel, original, creative or intellectual endeavours and/or investment. These proprietary rights enable owners to exclude/license reproduction and [for copyright works] online public communication. IP includes copyright, confidential information (such as commercial trade secrets), trade marks, designs and circuit layout rights, plant breeder's rights, and patents.

AusGOAL is the licensing platform that provides guidance on selecting appropriate licences for the release or protection of public sector information - including Crown copyright. AusGOAL applies to all Crown copyright protected information, but not any other forms of IP protection such as trademark, patent, or plant breeder licensing.

Crown copyright is generally regarded as public sector material that demonstrates intellectual endeavour, and that expresses, manipulates and/or presents ideas in a form that clearly shows authorship. Copyright is the most common form of IP owned by public sector agencies and includes original material in literary, artistic, dramatic and musical works; films, broadcasts, sound

[5] Creative Commons Australia is the affiliate of the International non-profit Creative Commons project. It is an innovative way to share and protect information. See http://creativecommons.org.au/about

[6] Note: Restrictive licences modelled on or developed without the use of the Restrictive Licence template under AusGOAL. may be appropriate in some limited circumstances.

recordings and multimedia; computer programs and databases.

Most information is expressed in a material form, usually in the written form and capable of being owned as copyright. AusGOAL only applies to information, which is predominantly copyright material. It is important to understand that most copyright does not have a direct commercial value to the agency and as such, it is able to be released using one of the six Creative Commons licences, details of which are available on the AusGOAL website (www.ausgoal.gov.au)

However, copyright information can inform the development of other IP including IP that has potential commercial value. Where copyright does contribute to IP with potential commercial value, this copyright may need to be protected using the Restrictive Licence template available on the AusGOAL website.

Before deciding upon a suitable licence (one of six Creative Commons or the Restrictive Licence) for the copyright information under AusGOAL, agencies need to determine what public sector information (copyright):

- is owned by them
- they are entitled to release or protect (restrict access)
- may have, or lead to, IP with commercial potential (and should be protected).

Step 2: Determine the form of IP

There are many forms of information that may require copyright or other IP protection. In determining the class of information and whether it qualifies for release, consideration needs to be given to issues such as information class, IP criteria, its confidentiality/security status, public interest, commercial and public good potential.

There are a number of issues that also need to be considered in the assessment process, including:

- ex ante decision making rules for proactive push release of government information under RTI principles
- public interest considerations in releasing the information assessed in accordance with AusGOAL, RTI and the Queensland Public Sector IP Principles
- factors relevant to Crown copyright and Restrictive Licence choices under AusGOAL, such as the information security classification.

Agencies need to ask whether the information should be licensed using the Creative Commons licences with the CC BY licence as the least restrictive licence in the AusGOAL framework.

Step 3: Conduct a licensing review

The AusGOAL website (www.ausgoal.gov.au) contains a useful guide to help agencies to conduct a licensing review and decide on the appropriate licence for their copyright material.

As part of the licensing review, the following issues need to be determined:

- If the information to be licensed is already protected by copyright or other IP protection. This assessment could involve:
  (a) ascertaining whether copyright or other IP exists in the information to be licensed
  (b) considering (if relevant) the bundle of exclusive rights of copyright to be licensed
  (c) ensuring that the copyright or other IP rights have not lapsed or expired.
- Whether or not the copyright is owned fully by the agency (the State). This assessment could involve:
  (a) ensuring there are no third party contractual constraints restricting licensing
  (b) confirming that State of Queensland is legally entitled (including having obtained all necessary third party permissions) to license the work.

Disputes over information ownership should consider:

- who owns the copyright (or related IP) in the inputs/components and who are the authors/inventors/generators of that copyright and other IP
- the licence terms of all licences/ contracts/IP legislation that entitle the department to license the information or that restrict the department's entitlement/ ability to license the information.

After completing this information gathering step, effort needs to be directed to selecting the most appropriate licence to use.

Step 4: Select the most appropriate licence

AusGOAL, supported by relevant Information Standards and other licensing information provided under the QGEA, mandates that agencies consider the use of the appropriate licence for their copyright. The guiding principle for this step is that agencies apply the least restrictive Creative Commons licence – the Attribution CC BY licence, unless there are exceptions for restricting release of the IP. If there is to be a restriction of the copyright material, it is necessary to select of one of the other five CC licences or a negotiated contractual licence, which may be based on the Restrictive Licence template under AusGOAL.

Consideration should be given to:

- whether or not the Creative Commons CC BY licence or another Creative Commons licence is appropriate. For further advice, refer to Creative Commons Australia (http://creativecommons.org.au/) or AusGOAL (www.ausgoal.gov.au)
- if restriction of the release of IP is necessary, and the CC licences are not appropriate, the Restrictive Licence template may be used as a basis to negotiate a contractual licence.

To determine if a restrictive licence should be used, consideration should be given to:

(a) the Restrictive Licence (RL) template on the AusGOAL website and its key terms as indicative of some of the issues to be considered in drafting a contractual licence

(b) IP rights – ownership and management and choice of one of the CC licences or the RL template (under AusGOAL) should be consistent with the delivery of agencies' core functions and services. Any commercialisation of IP consistent with core functions should produce benefits for Queensland commensurate with the transaction costs in protecting and commercialising the IP. Where this IP is deemed to have potential net commercial benefits, the copyright should be protected using a RL licence

(c) the agency's commercialisation principles and these IP Principles incorporating the IP assessment guide.

It should be noted that software is an example of information that would need to be restricted using a restrictive licence.

Seek advice from the relevant agency's legal unit in settling the terms of the licence. Note: once completed, the contract may be authorised by the agency as a master agreement for that class of information.

It is important that the IP Principles, the AusGOAL website and QGEA Information Standards are consulted. Further information on this matter will be available via the online IP Training Modules (under development).

Step 5: Check IP Principles and relevant policies and standards

Consider the Queensland Government IP Principles; QGEA Information Standards; and Department - specific IP/Information Management and RTI policies and guidelines. Of specific relevance are the QGEA Information Standards 26, 33, 34, 40 and 44.

Step 6: Obtain approvals for release

Agencies need to obtain all necessary internal approval and delegation before applying the selected licence to the information. It is important to gain appropriate level approval for the Creative Commons or RL template chosen under AusGOAL.

Step 7: Apply the correct (licensing) symbol

Apply the Creative Commons or RL symbol, website address, and attribution and licence statements – see the AusGOAL website and the Creative Commons Australia website directly for details on CC and consult the Creative Commons and Government Guide. Include a copyright notice for the licensing of copyright information via one of the CC licences, a RL or another arrangement

Relevant information includes:

- chosen licence marking and web address to the agency's document or web page
- Intellectual Property Officer contact details for copyright enquiries (not required for CC BY Attribution licence)
- agency or other contact details for copies or further information
- author details
- version number.

B. IP commercialisation

These are steps for agencies to follow in assessing the commercialisation potential of public sector IP:

Step 1: Perform IP pre-assessment

Does the IP have potential commercial value, even at the early stages? Could the 'Crown copyright' material be of value to the agency? Is there an imperative for protection by Government?

- **Assessment of the agency's functions and powers** as defined within each agency's core legislative and policy responsibilities including:
  (i) relevance of the commercialisation of IP to the agency's core business and primary objectives
  (ii) any legislative or policy instruments that may impact on the commercialisation of IP (e.g. RTI, AusGOAL, funding and contractual obligations, Cabinet decisions and pricing guidelines, etc.)
- **Description of the IP** and any unique characteristics, advantages and weaknesses in relation to:
  (i) Early stage technical and commercial potential
  (ii) IP protection/registration
  (iii) attracting relevant partners/investors
  (iv) market and competitors
- **IP commercialisation readiness** – lead-time required to develop the IP into a product/service and its release in the intended market and availability of resources to make this happen

Step 2: Seek expert opinion

Advice should be obtained to assess commercial feasibility and the most effective management of this IP, i.e. the extent of commercial potential, the appropriate process of commercialisation and options in IP protection.

This will involve establishing a **commercialisation team**. Agencies should outline the establishment of the team that includes the following components:

- **Technical expertise:** Technically trained people with history and experience in the development of the IP asset
- **IP commercialisation skills:** People with the expertise to organise, describe and commercialise (negotiate, contract, conclude the transfer) the IP
- **Legal:** Experienced IP lawyers in the aspects of preserving IP rights and contracting those rights to other parties.

The commercialisation process should consider the following in developing the commercialisation plan.

Step 3: Prepare a business case

The business case is to outline the costs and potential returns, and a pathway to achieve commercialisation and the appropriate IP protection.

- **Commercialisation mechanisms**– assessment of the advantages and disadvantages of each mechanism, e.g.
  (i) sale or assignment
  (ii) licensing – whether royalty based or royalty free Creative Commons licences
  (iii) franchise
  (iv) collaborative ventures/joint venture start up
  (v) spin-off companies
- **Resources** required – depending on the complexity of the IP itself and the commercialisation mechanism utilised and the requisite expert IP skills and resources
- **Sources of finance –** development of an objective business plan which will

assist in determining the requisite funding required and potential source of funding

- **Due diligence –** assessment of risks associated with commercialisation of the IP, including legal, infringement, accounting risk management and business structures that will vary according to the type of IP involved and portfolio responsibility
- **Minimisation of risks** – once the risks have been identified and evaluated, an appropriate risk management strategy should be implemented. Agencies should also have regard to their obligations under their legislation and policies and not expose the government to unnecessary or disproportionate risks that may be more appropriate for the private sector
- **The market** – a general description of the initial and future markets for the IP and some indication of the size of the market (e.g. small niche, a growing market or large public market nationally and internationally)
- **SWOT** – undertaking (strengths, weaknesses, opportunities and threats) analysis and evaluate size and potential growth; potential clients; competitors and competitive products; pricing and distribution charges; influences, factors, trends and opportunities/challenges in the marketplace; partners, and potential applications in other markets
- **Cost/benefit** – cost of commercialising versus predicted returns from the commercialisation method – returns may be monetary or in kind
- **Cost of the commercialisation method** – agencies weigh up the costs of administering any fees and charges levied by the agency (e.g. collection costs through licence agreements) compared with the benefits/cost savings of providing the IP to the public using the Creative Common licences under the Queensland Government's information licensing policy
- **Delegations** – agencies should consider delegating responsibility for approval processes to specific positions within the agency to minimise bureaucratic delays and thus avoid losing market opportunities.

Step 4: Obtain approval of the business case

The business case needs to be considered and endorsed by the agency or CBRC as appropriate.

Step 5: Convert IP and plan to achieve appropriate licensing returns

If commercially feasible, establish **project team** to implement business case to ensure appropriate IP protection and receipt of commercial returns. This will include seeking expert advice where necessary, e.g. legal, technical, and/or financial.