



AUSTRALIAN MUSEUM GUIDELINES

Keywords: Intellectual Property, IP, Copyright, Trade marks

Title of Guidelines: Intellectual Property Guidelines, 2009

Approved by: IP Committee

Date Approved: 12 July 2007

Last Revision: April 2009

Policy Manager: Assistant Director, Research and Collections

TRIM File: 06/2752

Notes:

FOREWORD

The Museum's IP Policy is intended to support its core function of creating and communicating knowledge while exercising due care for its fiduciary responsibility for the resources it administers. The Museum recognises the importance of fostering creativity and innovation amongst Museum Staff while respecting the rights of all parties.

The format of these Guidelines reflects that of the IP Policy in that, where possible, each section and sub-section/s of the Guidelines has the same numbering and related content as the IP Policy.

Contents

FOREWORD	ii
1 Introduction.....	1
1.1 Purpose of the IP Policy.....	1
1.2 Risk Management Approach	1
1.3 Scope of the IP Guidelines.....	2
2. Application to Museum Staff.....	3
3. Background - What is IP?.....	3
3.1 Overview of Copyright.....	5
3.1.1 Duration of Copyright.....	5
3.1.2 Crown Copyright.....	6
3.1.3 Moral Rights	7
3.2 Overview of Trade Marks	7
3.2.1 Registration of Trade Marks.....	7
3.2.2 Domain Names	8
3.3 Overview of Patents	8
3.4 Overview of Designs	9
3.5 Overview of Confidential Information	9
4. Ownership of IP created by the Museum	10
4.1 Museum Employee.....	10
4.1.1 What is meant by the phrase ‘in the course of their employment’?	10
4.1.2 What is the relevance of ‘secondary employment’?.....	11
4.2 Museum Staff other than Museum Employee.....	11
4.2.1 General IP	11
4.2.2 Copyright Material	12
4.3 Collaborative Projects (or Partnerships)	12
4.4 Contractors and Consultants.....	13
4.4.1 General IP	13
4.4.2 Commissioned Copyright Material.....	13
4.5 Exceptions to Ownership – Museum Staff.....	14
5. Use of IP by Museum.....	15
5.1 Use of IP owned by the Australian Museum	15
5.1.1 Trade Marks owned by the Australian Museum	15

5.1.2 Use of Copyright Material owned by the Museum	16
5.1.3 Protection of patents and designs owned by the Museum	20
5.2 Use of IP owned by Third Party	20
5.2.1 Use of Trade Marks owned by Third Party.....	20
5.2.2 Use of Patents/Designs owned by Third Party	21
5.2.3 Use of Copyright Material owned by Third Party.....	22
5.3 Moral Rights in respect of Copyright Material	23
5.3.1 Right of Attribution of Authorship	23
5.3.2 Right not to have Authorship Falsely Attributed.....	24
5.3.3 Right of Integrity of Authorship.....	24
5.3.4 Consent to Infringement of Moral Rights.....	25
6. Commercialisation of Museum owned IP	26
6.1 Licensing or Assignment of Australian Museum owned IP	26
6.1.1 Licensing	26
6.1.2 Assignment	27
6.2 Licensing or Assignment of 'Excluded Copyright Works'	27
7. Indigenous Material	28
8. Appendices	29
Appendix I: Further Information and Reading.....	29
Appendix II: Extract from NSW Gov. Personnel Handbook, Sept. 2005	30
Appendix III: Trade Mark IP Datasheet	32
Appendix IV: Australian Museum On-line Copyright Statement	34
Appendix V: IP Disclosure Form – Patents & Designs	35
Appendix VI: Permitted Uses of Third Party's Copyright Material	40
Appendix VII: Procedural Guidelines for Dealing with Copyright Works.....	42
Appendix VIII: Model Forms, Suggested Contractual Clauses	44
Appendix IX-(a) Exceptions to Author's Moral Rights – When is it considered 'reasonable'?.....	47
Appendix IX-(b): Exceptions to Author's Moral Rights – Consent.....	48
Appendix IX-(c): Procedural Guidelines for Dealing with Moral Rights Issues.....	49
Appendix X: Drafting a Licence Agreement – Checklist.....	50
Appendix XI: Assignment Deed.....	51
Appendix XII: Procedural Guidelines for Dealing with 'Excluded Copyright Works'	53

1 Introduction

The purpose of this document is to provide general introductory information about Intellectual Property (IP) and to explain the purpose of the provisions in the Australian Museums Intellectual Property Policy (IP Policy) to Museum Staff. It is intended to act as a guide to the various matters that may arise within the Museum with respect to IP created and used by Museum Staff, and to promote consistency in this regard. The IP guidelines use the same definitions of terms provided in the IP Policy.

1.1 Purpose of the IP Policy

The Museum's IP policy establishes a framework for managing the IP created or used by Museum Staff which supports the Museum's core function of creating and communicating knowledge. The policy has been developed under the ***Intellectual Property Management Framework for the NSW Public Sector*** (the Framework) issued by the Premier's Department of NSW. The policy must operate within the confines of IP law (that is, Commonwealth legislation and the common law). While meeting these requirements, it aims to meet institutional needs, obligations and perspectives as well as ethical considerations and the values the Museum wishes to express.

The IP of the NSW public sector is a significant asset. The Museum is required to manage its IP responsibly, in the same way it manages other state assets under its responsibility, such as its collections, finances, buildings and infrastructure.

The *IP Framework* identifies and encourages better practice for creating, using, sharing, protecting, and commercialising of IP in the NSW Public Sector to optimise the economic, social and environmental benefits to the people of NSW. It includes a set of mandatory IP principles, which all general government sector agencies must implement and a non-mandatory *Better Practice Guide* for managing IP. The *Better Practice Guide* can be adapted as appropriate by all agencies.

1.2 Risk Management Approach

The Museum has adopted a risk management approach in developing its IP Policy with a view to reducing the impact of risk to an acceptable level. This risk management strategy underpins the implementation of the policy, and takes into account what significant intellectual property is likely to be created, owned, used or controlled by the Museum. The *Better Practice Guide* further recommends that a risk management approach is used when determining which IP must be identified, recorded (and where

applicable – registered) by the Museum. A risk management approach is one where risks are identified, assessed and ranked. Appropriate resources are applied and decisions made on the basis of those assessments and ranks.

Risk can be defined as a function of both probability and consequences. A situation may be high risk even though its probability is low because the consequences may be unacceptable. For example, the probability of someone misusing certain types of IP may be very low, but the consequences – for example, damage to the Museums reputation – could be unacceptable.

Using a risk management approach, IP related risks which are considered high level (such as those that could lead to a legal action against the Museum, or a large amount of potential revenue being lost) will receive more attention and resources than those that are considered lower risk. In assessing consequences, both the positive and negative consequences must be weighed. Where positive consequences outweigh the negative, action under IP law may not be appropriate. For example, where the Museum allows wide use of its copyright material (than is generally allowed under copyright law) in order to fulfil its objectives of creating and communicating knowledge. In other words, just because the Museum can take a particular course of action under IP law, this does not mean that it will necessarily take that course of action. Rather, the situation will be evaluated and the risks of action versus inaction considered.

The risks related to IP at the Museum include: (a) loss of opportunity (potential revenue) from IP created by the Museum; (b) potential infringement by the Museum of third party IP rights (and *vice versa*) and (c) misappropriation of Museum owned IP (or IP for which the Museum is the custodian) by third parties.

1.3 Scope of the IP Guidelines

The areas of IP addressed in these Guidelines include those covered under Commonwealth legislation and the common law that are created (or have the potential to be created) or used at the Museum. Specifically these guidelines address the legal areas of copyright, trademarks, patents and designs. It is noted that the Australian Museum's *Code of Conduct 2004* deals with the use of Confidential Information at the Museum.

These Guidelines only briefly address those areas that frequently intersect with IP, such as information management, image and photographic management, records management, privacy and publicity rights, computer use, data storage and authorship. These areas have their own Museum policies and guidelines which are listed on the Museum Intranet.

A list of useful websites in relation to IP is provided as Appendix I to this document for further information.

2. Application to Museum Staff

The IP policy applies to all Museum Staff. The policy addresses ownership and use of IP at the Museum. These two components are considered from two different perspectives:

- where the IP is developed and owned by the Museum, and
- where the IP is created by (or with) a third party.

In terms of ownership of IP created by Museum Staff, there are various categories depending on the nature of the engagement of the individual staff member, that is, whether that Museum Staff member is an employee under the *Public Sector & Management Act (NSW), 2002*, or otherwise. This is discussed further under 4.1 and 4.2 below.

3. Background - What is IP?

Broadly speaking, IP is a generic term for the various rights which the law accords for the protection of creative effort, by way of preventing others from using original ideas. In Australia, IP is protected by various Commonwealth statutes (listed in Table 1 below), and also under common law.

Table 1 – Type of IP and associated governing legislation.

IP Type	Governing Legislation
Copyright	<i>Copyright Act 1968 (Cth)</i>
Trade Marks	<i>Trade Marks Act 1995 (Cth)</i>
Patents	<i>Patents Act 1990 (Cth)</i>
Designs	<i>Designs Act 2003 (Cth)</i>
New Plant Varieties	<i>Plant Breeder's Rights Act 1994 (Cth)</i>
Circuit Layouts	<i>Circuit Layouts Act 1989 (Cth)</i>

Trade secrets and other confidential information may be protected against use or revelation under common law through the equitable doctrine of breach of confidence.


- **Copyright** is governed by the *Copyright Act 1968 (Cth)* and protects the expression in material form of ideas or information. Any work or object created by a person is automatically protected by copyright. There is no process for registration, and copyright arises without any formal steps being taken to claim it. Moral rights are rights that are personal to the creators of certain copyright material, regardless of who owns the copyright for other purposes.
- **Trade Marks** are signs which indicate that goods or services originate from a particular trader. A trade mark can be registered and protected under the *Trade Marks Act 1995 (Cth)*. Trade marks are also protected under common law.

- A **patent** is a right granted for any device, substance, method or process which is new, inventive and useful. Patents are granted under the *Patents Act 1990 (Cth)*. An application for registration is necessary.
- **Designs** are governed by the *Designs Act 2003 (Cth)*, which establishes a system for registration of new and distinctive designs for the visual presentation of commercial products.

Of those IP types listed above, the scope of IP at the Museum includes copyright, trade marks (and to a lesser degree confidential information). While the Museum does not hold any registered patents or designs at present there is that potential in the future. Table 2 below lists the types of IP, with examples, created or used at the Museum. This is not an exhaustive list, but highlights the types of IP that may exist at the Museum.

Table 2 – Types of IP (with examples) at the Museum

©Registered ™ Not Registered but still capable of acting as a trade marks * Not strictly within this category.

Copyright	Trademark	Patent/Design	Trade Secret/ Confidentiality
Certain anthropological object collections, paintings, works produced (<i>where the lifetime of copyright has not expired</i>)	MUSEUM IN A BOX®	Potential for future Museum owned Patents or Designs	Exhibition concepts
Publications (e.g. books, catalogues, scientific journals)	AUSTRALIAN MUSEUM EUREKA PRIZES®	Use of Museum of third party patented products or processes	Marketing plans
Website	AM (Series)™		Software code
Multimedia works			Culturally sensitive material
Public relations materials	Publication name e.g. EXPLORE™		
Images	Public program name(s)		
Film, Video	Domain name*		
Sound recordings (CD's tapes, phonographs)			
Manuscripts, maps, architectural drawings – <i>Archival material where copyright subsists</i>			
Educational materials, e.g., handouts, work exercises, gallery guides, teacher materials			
Public programs			
Software, Databases			
Administrative and cataloguing materials			

3.1 Overview of Copyright

Copyright is a type of legal protection available to those who express ideas and information in certain forms, most commonly writing, visual images, music and moving images. Copyright protects the form or way an idea or information is expressed, not the idea or information itself (nor styles and techniques). The basic purpose of copyright is to reward creative enterprise and protect copyright owners from a loss of revenue from unauthorized copying.

Copyright is automatic from the time it is first written down or recorded in some way, provided it has resulted from its creator's skill and effort and is original. There is no registration system for copyright in Australia.

The *Copyright Act 1968 (Cth)* is federal legislation and applies throughout Australia. It provides that owners of copyright (as distinct from the owner of the material) have a number of exclusive rights over their material.

Different rights apply to different types of material. Owners of copyright in 'artistic works', for example, have the exclusive rights to reproduce the work, make the work public for the first time and communicate the work to the public. Owners of copyright in literary, dramatic and musical works have further exclusive rights to perform the work in public and to make an adaptation.

Anyone who wishes to use copyright material in any of these ways generally needs permission from the owner. That is, people usually need permission to use copyright material in any of the ways exclusively controlled by the copyright owner (in the form of a license or an assignment – refer section 5 and 6 of these Guidelines). Someone who does not get permission may be infringing copyright. It is also possible for a person to facilitate infringement of copyright if they authorize an infringement, import copyright items or sell infringing articles.

3.1.1 Duration of Copyright

There is no strict rule of thumb to determine the duration of copyright, and it depends on the owner (*i.e.* whether it is the Government), the type of copyright material and whether or when the work has been published. Copyright exists for different periods for different categories. Table 3 overleaf is intended as a guideline only. The Copyright Council has issued an Information Sheet¹ which assists people in determining whether or not copyright has expired. Once copyright has expired, anyone may use that material without needing copyright clearances or permissions.

The copyright in each type of work or other subject matter has independent existence. For example, for a film broadcast on television, separate copyright may subsist in the film itself, the broadcast of the film, the underlying script and any sound recording

¹ G23, Duration of Copyright -available from <http://www.copyright.org.au/publications/infosheets.htm>

which is part of the film. Different copyright owners may own each of these different kinds of copyright. Similarly, for a compact disc, there may be a separate copyright in the lyrics, the composition and arrangement of the music and the sound recording of the work.

3.1.2 Crown Copyright

Crown copyright refers to copyright owned by the Government of a State or Territory, or the Commonwealth. Advice received by the Museum is that where copyright material is created under the direction or control of the Museum (*i.e.* where works are created by Museum Employees in the course of their work, or by persons who are creating material under the direction and control of the Museum), the State shall be the owner of the copyright unless otherwise agreed to in writing.

Use of copyright material owned by the State of New South Wales through the Museum and also use by the Museum of copyright material owned by third parties is referred to under the separate headings of 5.1 and 5.2 of these Guidelines.

Table 3 – Copyright material categories and associated duration.

CATEGORIES	DURATION OF COPYRIGHT
Broadcasts	50 years from the end of the year of the broadcast (Before 1 May 1969: no copyright exists)
Computer programs	Life of creator + 70 years
Photographs	Life of creator + 70 years If the photo was first published anonymously or under a pseudonym then = year first published + 70 years If taken before 1 January 1955 then copyright has expired
Literary, dramatic and musical works	If made public during creator's life = Life of creator + 70 years NOT made public during creator's life = year made public + 70 years
Artistic works	Life of creator + 70 years
Sound recordings	Year first published + 70 years, unless made before 1 January 1955 in which case copyright has expired.
Published edition	25 years from the end of the year in which the edition was first published
Works of unknown authorship	Year first published + 70 years, unless first published before 1 January 1955 in which case copyright has expired.
Unpublished literary, dramatic and music works	If such material remained unpublished, copyright would not expire.
Government-owned copyright (that is, Crown copyright)	Generally, copyright in these cases has not been changed by the Australia – United States Free Trade Agreement (AUSFTA) and, depending on the type of material, continues to last until 50 years from the end of the year in which it was made, or from the end of the year of first publication.

3.1.3 Moral Rights

Moral rights are rights that individual creators have in relation to copyright works created by them and are separate from the rights of the copyright owner (for example, to reproduce the work) who is not necessarily the creator. Creators have the following rights:

- To be attributed (or credited) for their work;
- Not to have their work falsely attributed; and
- Not to have their work treated in a derogatory way.

Moral rights arise automatically upon the creation of a work and last for the same period as copyright. Moral Rights belong to the creators of copyright works and cannot be transferred, assigned or sold. They can however be waived. There are a number of situations in which Moral Rights may not need to be recognised (discussed further at 5.1.2.2 Moral Rights). For example, it will not always be reasonable for an employee or contractor to assert their Moral Rights. The Museums procedures in relation to Moral Rights are addressed in 5.3 of these Guidelines.

Where moral rights arise in the context of employment or a contract for services the holder of the moral rights cannot usually object when their authorship is not acknowledged or their work is varied in ways the author would object to. There will also be cases arising in the context of employment or a contract of services where it would be unreasonable not to acknowledge authorship.²

3.2 Overview of Trade Marks

A trade mark is a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person. A trade mark is of most benefit to the owner when there is a certain image or perception of quality associated with it (for example, KODAK or CHEVROLET). This gives it potential as a marketing tool.

A sign can include any letter(s) (for example, BMW), word (for example, WHOPPER), name (for example ABERCROMBY'S), signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape (Coca Cola bottle) , colour, sound or scent, or any combination thereof.

3.2.1 Registration of Trade Marks

Trade mark registration with IP Australia (www.ipaustralia.gov.au) via application to the Trade Marks Office, is not compulsory but it is advisable. Trade mark protection

² ss195AR and 195AS *Copyright Act 1968 (Cth)*

exists under the *Trade Marks Act (Cth) 1995* and under common law. If a trade mark is **not registered** and another person uses it, the owner may have to take a passing off action under the common law to stop the infringement.³ It is also possible to rely on Section 52 of the *Trade Practices Act (Cth) 1974* in order to protect you from others trying to use your business reputation to sell their product. However in doing so, you will have to prove that you have developed a reputation in the trade mark and that use of the other trade mark would be likely to confuse or deceive the public. This can be difficult and expensive. If the trade mark is registered, a letter from a lawyer or patent attorney may be all that is needed to deter the infringer. The *IP Framework* recommends that NSW agencies seek registration for their trade marks.

3.2.2 Domain Names

A domain name is the unique name that corresponds with an internet protocol address. Registration of a domain name with the appropriate regulatory bodies prevents subsequent registration of an identical domain name by other traders. Domain names do not fall strictly within the category of 'trade marks', particularly since the establishment of ICANN – the Internet Corporation for Assigned Names and Numbers (www.icann.org) which acts as the key regulatory role at the international level. However, there is to a certain extent a degree of overlap.

Further information on domain names can be found at the Australian Domain Name Administrator website (www.auda.org.au).

3.3 Overview of Patents

A patent is a right granted for any device, substance, method or process which is new, inventive and useful. Patents are granted under the *Patents Act (Cth) 1990*. Patents, for which an application must be made to the Patent Office, provide the patent owner with the right to exclude others from exploiting the invention for the lifetime of the patent. In return for which the patentee must publish details of the invention. In Australia, there are two types of patents – a standard patent and an innovation patent. A standard patent lasts for 20 years and requires a higher threshold of inventiveness than an innovation patent (which lasts for eight years). In order to be patentable, an invention must be a "manner of new manufacture" (generally speaking, a product or a process which has some useful commercial application). It must also be novel (not anticipated by others) and inventive (that is, not merely an obvious advance in the light of existing knowledge).

³ Passing off is a common law action used to prevent trader A from misusing trader B's goodwill or reputation by misrepresenting that A's goods or services are those of or related to B. Most passing off actions are brought in conjunction with an action for breach of the misleading and deceptive conduct provision of the trade practices legislation. The two actions are similar, although under the trade practices provision it is not necessary to prove customers have actually been misled.

For example, a patent in relation to a Rotary Clothes Hoist was granted to Lance Hill (Australian Patent 215772 lodged 22 March 1956) for the winding mechanism of a rotary clothes hoist. The Hills Hoist is a rotary clothes line fitted with a hoist operated by a crown and pinion winding mechanism which allows the frame to be raised and lowered. It was developed and marketed by Lance Hill in 1945. The idea of a rotary clothes line was not new - US patent 434921 of 26 August 1890 is much earlier and there were similar products in Australia. Hills initial patent application lapsed, but he obtained a patent in 1956 for the winding mechanism. Hills Hoists are now sold throughout Australia, Asia, Europe and North America.

Demonstration, selling or discussing an invention in public before filing a patent application, may preclude the inventor's ability to gain a patent.

3.4 Overview of Designs

A design is the overall appearance of a product. The visual features that form the design include the shape, configuration, pattern and ornamentation which, when applied to the product, give it a unique appearance. A registered design can be a valuable commercial asset (for example, design for watch case owned by Swatch Ltd.). Registration of a design gives the owner protection for the visual appearance of the product but not the feel of the product, what it is made from or how it works. In Australia, designs are governed by the *Designs Act (Cth) 2003*. It provides for the protection of new and distinctive designs for the visual presentation of manufactured products.

To be registrable, a design must be new and distinctive. 'New' means the identical design (or one very similar) has not been publicly used in Australia nor has it been published in a document within or outside Australia. For example, a design would not be considered new if it had been 'published' on the Internet before the date it was filed (or its priority date, whichever is earlier). A design is 'distinctive' unless it is substantially similar in overall appearance to other designs already in the public domain. Registered design protection lasts for up to 10 years.

3.5 Overview of Confidential Information

Information that one party possesses, but is not generally known by other parties, is referred to as "confidential information" and includes "know-how" and "trade secrets". In a commercial environment, it is often this information that distinguishes one party's expertise from those of their competitors (for example, Coca Cola recipes or experimental conditions). Know-how and trade secrets can only be protected by keeping this information confidential. Confidentiality or non-disclosure agreements can be used to protect confidential information. Such an agreement must be signed by the person who is to receive the information. The protection of confidential information is dealt with in the Museum's *Code of Conduct 2004*.

4. Ownership of IP created by the Museum

There are a number of categories of staff working at the Museum and using Museum resources. Ownership of IP by these various categories peoples varies under law according to the nature of the engagement.

4.1 Museum Employee

The Museum acknowledges that Museum Employees play a vital role in the creation of IP for the Museum. However, it must be noted that as employees of the State, their contribution is the property of the State of New South Wales. This section of the Museum IP policy states that the State of New South Wales (via the Museum) is the owner of IP created by Museum Employees in the course of their employment unless:

- (a) there is an agreement in place between the Museum (signed by the Director) and the Museum Employee to the contrary; or
- (b) there has been an Assignment in relation to an “Excluded Copyright Work” (that is, a technical publication).

The reason for this is as follows. The default position under common law⁴ in Australia is that IP created by an employee in the course of their employment will be owned by the employer. This default position can be contractually modified.⁵

The Australian Museum Trust cannot employ staff. Museum Employees are employed under Chapter 1A of the *Public Sector Employment and Management Act (NSW) 2002* in the service of the Crown (Chapter 4A of that Act). Essentially, for Museum Employees, this means the State of New South Wales owns IP created as a result of their employment. Where the IP created by the Museum Employee is copyright material, it is considered Crown Copyright.⁶

4.1.1 What is meant by the phrase ‘in the course of their employment’?

This phrase, in this context, generally means that IP developed by an employee, while undertaking tasks that fall within the job description or that reasonably may be considered to be essential to the work and services they were providing to their employers, belong to the employer.⁷ Questions of interpretation often arise and the

⁴ And as specified in some statutes (for example, s 35(6) of the *Copyright Act (Cth) 1968*)

⁵ That is, in the absence of express terms relating to ownership of IP in a contract of employment, the IP made by an employee, in the course of employment, will be owned by the employer.

⁶ Advice received.

⁷ Academics and IP: Treading the Tightrope - [2004] *Deakins Law Rev.* 32; (2004) 9 *Deakin Law Review* 759

result must be determined by the facts of the situation.⁸ Where questions arise in relation to this phrase, Museum Employees should refer to 4.5 of these Guidelines and discuss with the IP Policy Manager.

4.1.2 What is the relevance of 'secondary employment'?

Because Museum Employees are subject to the *Public Sector & Management Act, 2002* they must obtain approval (in writing) from the Director before they engage in any form of paid employment outside their official duties (refer also Museum's *Code of Conduct 2004*). This becomes relevant where a Museum Employee wishes to claim ownership of, and wishes to benefit financially from, IP created outside the course of their employment (as it may be considered a form of secondary employment). The relevant sections from the *NSW Government Personnel Handbook, September 2005* (at Chapter 5) have been reproduced (with permission) as an Appendix II to these guidelines.

Furthermore, the section of the Museum's *Code of Conduct 2004* which deals with 'Conflicts of Interest' becomes relevant here – that is, that secondary employment should not compromise the integrity of the Museum Employee and the Museum.

In summary, if a Museum Employee wishes to carry out any commercial activity outside of their public service employment, they should refer to the Museum's *Code of Conduct 2004* and the *NSW Government Personnel Handbook*.

4.2 Museum Staff other than Museum Employee

4.2.1 General IP

The Museum acknowledges that all categories of Museum Staff contribute significantly to the creation of IP for the Museum. In recognition of their important contribution to the work of the Museum, the Museum makes no general claim on the IP produced by Museum Staff who are not Museum Employees. The Museum may however require a free non-exclusive license to use this IP for research, educational or exhibition purposes. In particular situations, there may be a need or requirement to claim full or part ownership of IP produced (for example, where the Museum may have provided the grant or other special support toward the production of the IP, where the Museum wishes to build on the IP generated, or where the IP generated is part of an on-going project). In these circumstances, the Museum and that member of staff will enter into a mutual agreement (written). The supervisor/manager responsible for the engagement of such a Staff Member, in liaison with the Policy Manager and the staff member should decide upon the ownership of IP arising from the staff member. The staff member should be given an opportunity to seek independent advice before signing.

⁸ Ultimately a court of law may need to decide.

4.2.2 Copyright Material

Special consideration is required for copyright material created by Museum Staff other than Museum Employees. As advised by the Crown Solicitors, copyright in works that are created 'under the direction or control' of the Museum (or first published in Australia by the Museum by or under its direction or control) will be considered Crown Copyright (*i.e.* owned by the State of New South Wales). Therefore, where non-employees create copyright material '*under the direction or control*' of the Museum this copyright material can be considered to be owned by the Crown. However, this phrase often creates some doubt concerning entitlement of the Crown to the work. Therefore, if the Museum wishes to assert ownership of IP arising from the engagement of any staff in this category, it is better practice that agreements are put in place prior to the engagement of such staff and commencement of work.

4.3 Collaborative Projects (or Partnerships)

Agreements to ownership of significant IP arising from these projects should be negotiated on a case-by-case basis, prior to the commencement of the project. The Museum should consider a number of parameters, including:

- The pre-existing Museum and Third Party IP, to assist in the determination of the nature of the IP, if any, which is likely to be developed as part of the collaboration;
- The roles, responsibilities and contributions of the parties involved, in particular the level and extent of the Museum's involvement;
- Requirements of the funding body, if any;
- Cost-effectiveness of the Museum owning the IP⁹ developed as a result of the project; and
- The mission and public duties of the Museum as a NSW Government Agency.

The Museum shall seek appropriate legal, financial and commercial advice on more complex contract and negotiating issues relating to IP. The Director (or delegate), with the assistance of the Policy Manager, shall make the final decision on whether the contract or agreement will be authorised (by the Director or delegate). Documentation relating to the negotiation for each project should be kept on the project file (including all pre-signing negotiations).

⁹ Whilst ownership gives the greatest flexibility, the Museum may pay a high premium to own the IP. It may be more cost-effective to allow Third Parties to own the IP. In some scenarios, however, ownership may be required for the Museum to fulfill its public duties.

4.4 Contractors and Consultants

4.4.1 General IP

The Premier's Department recommends that ownership of IP to be created as a result of the engagement of a Contractor or Consultant by the Museum should be clarified and agreed upon prior to the engagement. A sample contract to be used by NSW government agencies for the engagement of Consultants is available on the Premiers website¹⁰, which includes a recommended approach, and standardised clauses, regarding IP ownership.

The Museum should take a considered approach towards managing risk and opportunity in determining what IP rights to acquire during procurement, contracting and engaging consultants. For example¹¹:

Licensing (Museum decides to acquire a licence to use the IP)	Owning (Museum decides to own the IP)
One off, isolated or non-critical use Alternative solutions available Low exit costs	On-going or critical use Is likely to be further developed and the Museum will need the enhancements High exit costs

This section of the IP Policy has been drafted on the basis that the Museum will endeavour to claim ownership of the IP rights (in-line with Consultancy Agreement Guide-notes available from Premiers website). Where the Consultant retains ownership on the newly created IP Rights, the Museum should ensure that it obtains the appropriate license (consider cost and duration of licensing arrangement) for which it wishes to use those IP Rights. Licensing is further discussed under Part 6 of these Guidelines.

4.4.2 Commissioned Copyright Material

The fact that the Museum may have commissioned and paid a third party to produce copyright material, does not automatically give the Museum any right of ownership (of copyright) in that material, unless it was under the direction or control of the Museum (that is, something more than simply commissioning the work will be required). Consequently, any reproduction of the copyright material would require the consent of the creator. In these situations, the Museum should consider seeking ownership of copyright material produced (that is, in favour of the Crown).

There are a number of reasons for this:

¹⁰ www.premiers.nsw.gov.au/pubs_dload_part4/prem_circs_memos/prem_circs/circ2000/attachments/c200047agree.pdf

¹¹ *Intellectual Property Management Framework for the NSW Public Sector, 2005* at page 15.

- It gives the Museum the freedom to deal with the material without having to pay fees to the original designer or writer.
- It also gives the Museum the power to prevent misuse of the copyright material by the contractor or third party.
- In many cases the Museum will wish to waive copyright in the material in order to allow the public free use of it. It can only do this if it owns the copyright.
- On rarer occasions, when commercial exploitation of the material is possible, it allows the Museum to benefit, rather than the contractor/third party.

4.5 Exceptions to Ownership – Museum Staff

This section has been added to allow for situations in which a Museum Staff member wishes to assert ownership (partial or otherwise) in copyright material created by them (for example, a popular book), using Museum Resources, for commercial gain. Agreements will be addressed on a case-by-case basis and should be in place prior to the commencement of the work. To ascertain whether a conflict of interest exists, Museum Staff should refer to the Museum's *Code of Conduct 2004*.

Where the staff member who wishes to assert ownership in copyright material created by them (or obtain royalties for copyright material) is a Museum Employee it is necessary that the Agreement be in accordance with the Secondary Employment Procedures of the Museum. The relevant section (s59) of the *Public Sector Employment and Management Act (NSW) 2002* and relevant sections of the Personnel Handbook are listed as Appendix II.

5. Use of IP by Museum

How IP is used at the Museum depends upon whether it is owned by the Museum (*i.e.* State of New South Wales) or by a third party. Where IP is owned by a third party, appropriate permission should be sought prior to its use (for example, reproducing an image for which the copyright is owned by a third party on the Museum website).

5.1 Use of IP owned by the Australian Museum

5.1.1 Trade Marks owned by the Australian Museum

5.1.1.1 Selection of Trade Marks by the Museum

Before choosing a trade mark for use in relation to particular goods or services for the Museum it is important to ensure that the proposed mark does not infringe third party legal rights (that is, that the mark is not already previously owned/used by someone else in relation to the particular goods or services in Australia). It is advisable to ensure that the proposed trade mark (or one very similar) has not already been registered by a third party in relation to the relevant goods and services.¹²

It is suggested that the investigations outlined in Table 4 below should be conducted. Ideally these investigations should be done prior to the development of the trade mark.

Table 4 – Trade Mark Investigations

No.	Type	Website	Information
1	ATMOSS	www.ipaustralia.gov.au	IP Australia maintains an on-line database of all trade marks registered in Australia. The Australian Trade Marks Online Search System (ATMOSS) allows you to conduct trade mark searches of these registered trade marks using a range of criteria (<i>e.g.</i> owner, trade mark). It is designed to help trade mark applicants to search for similar trade marks, providing all the most important details of trade marks, including words and images, owner details and goods and services claimed.
2	GOOGLE	www.google.com.au	A simple GOOGLE search is also useful in determining whether there is prior use of your chose trade mark in Australia.
3	ASIC	www.asic.gov.au	A search on the Australian Securities and Investments Commission can also reveal

¹² And that it is not infringing any other legal rights such as those under the *Trade Practices Act (Cth) 1974* (that is, for misleading and deceptive conduct) and the law of “passing off”.

whether your proposed trade mark is listed as a business name in Australia.

5.1.1.2 Use of Trade Marks owned by the Museum

Maintaining consistent and professional use of Museum owned trade marks assists the trade mark to fulfil its purpose of distinctively identifying the services and products provided by the Museum.

- Trade marks owned by the Museum are listed on the IP Register.
- Where a new trade mark has been developed, a Trade Mark IP Datasheet (provided as Appendix III) is to be completed by the responsible Manager and forwarded to the IP Policy Manager who will enter key data into the IP Register. An assessment of the registrability of the trade mark is to be conducted in line with 5.1.1.2 of the IP policy.

5.1.1.3 Use of Corporate Identity/Brand of the Museum

In using the Museum (Echidna) logo, all Museum staff should follow the simple guidelines available on the Museum Intranet, listed under the heading of "Corporate Identity" – http://intranet/corporate_identity/index.htm.

5.1.2 Use of Copyright Material owned by the Museum

Although copyright automatically vests in original works and is not dependent on any formal notices, it is best practice for copyright owners to use a copyright notice to put the public on notice as to the owner of the work. As mentioned in Section 4 of these guidelines, ownership of IP created by the Museum depends on who created it and on any contractual agreements entered into at the time of creation of the material. Ownership of copyright in material should be clarified before applying a copyright notice or statement.

5.1.2.1 Marking of Crown Copyright Material

Copyright Notice: The following notice shall be applied to all copyright material which is created, and where copyright is owned, by the Museum:

© Australian Museum [year of first publication or creation]

This identifies that copyright is Crown Copyright (owned by the State of New South Wales via the Australian Museum).

Copyright Statement: The IP Framework recommends a copyright statement be applied to 'make clear any automatic copyright permission the agency wishes to provide, any restrictions on use of the material, and how to obtain any further copyright

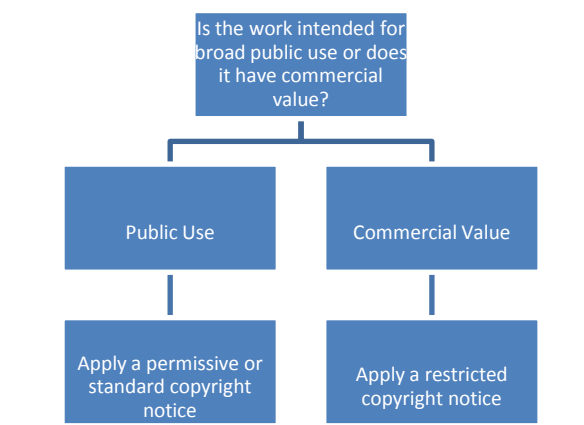
permissions'. It can be placed for example on the inside of the cover of a publication, at the end of a publication or at any other appropriate location (as space allows). If the Museum does not wish the user to freely reproduce and distribute the work to others, a more restricted copyright notice will apply to that work. Examples of statements are given in the Table 5 below.

Table 5 – Examples of Copyright Statements

Copyright Notice	Explanation
<p>© Australian Museum. You may copy, distribute, display, and otherwise freely deal with this work for any purpose, provided that you attribute the Australian Museum as the owner. However, you must obtain permission if you wish to (1) charge others for access to the work (other than at cost), (2) include the work in advertising or a product for sale or (3) modify the work.</p> <p>© Australian Museum. This work may be freely reproduced and distributed for most purposes, however some restrictions apply. These are:</p> <p><i>Insert restrictions</i></p>	<p>Permissive copyright notice.</p>
<p>© Australian Museum [year of first creation or publication]. All rights reserved.</p>	<p>This notice is the most restrictive. If a member of the public purchases the publication, it prevents that person from making additional copies, except as otherwise permitted by the <i>Copyright Act (Cth)</i> 1968.</p>
<p>© Australian Museum [year of first creation or publication]. This work may be freely reproduced and distributed for personal, educational or government purposes. Permission must be received from the Museum for all other uses.</p>	<p>This notice appreciates that while the Museum may wish to limit the private sector's use and reproduction of a publication, it allows (and does not expect remuneration for) copying and distribution for personal use or by educational or government bodies.</p>

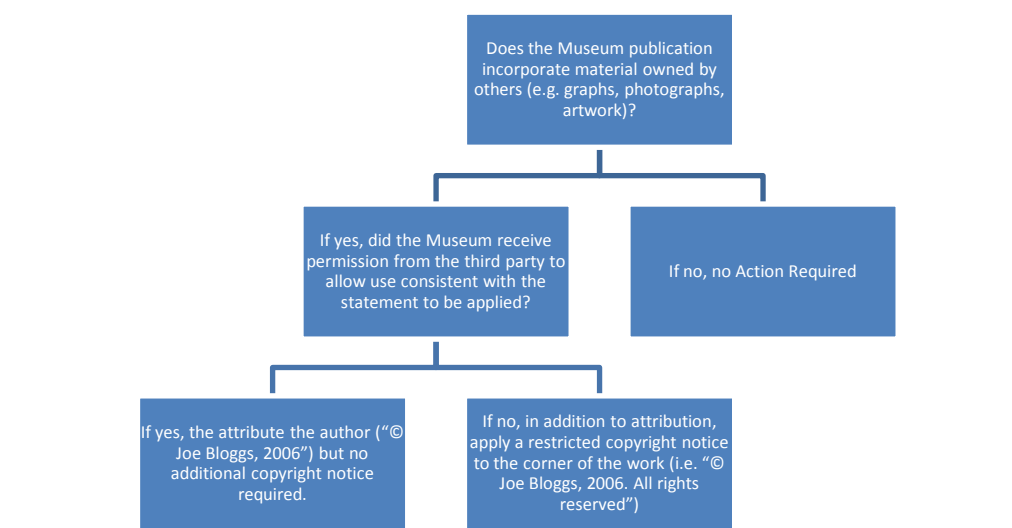
In order to determine whether a standard or restrictive copyright notice applies to material which is © Australian Museum, the *Copyright Management Toolkit*¹³ suggests that the following approach outlined in Figure 1.

Figure 1 – Choosing an appropriate copyright statement: © Australian Museum



A separate approach is used where with respect to works where the work includes copyright elements where copyright in those elements is owned by a third party (refer Figure 2 below).

Figure 2– Choosing an appropriate copyright statement: includes © Third Party



¹³ Prepared by the AGD, NSW and available from the Premiers website at <http://www.premiers.nsw.gov.au/>

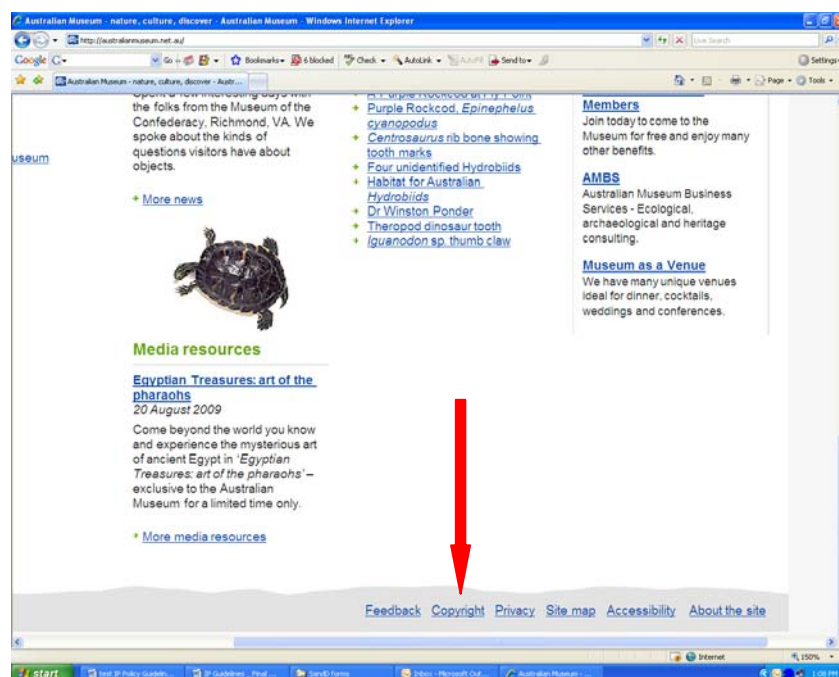
The author of the copyright material may also need to be attributed. This is dealt separately in these guidelines under the following heading in part 5.3 of these guidelines.

5.1.2.2 Marking of Museum Website

There is little control over the use of images and text once they are published on the internet. Where copyright control must be retained by the Museum, such copyright material should not be put on the internet.

The *Copyright Management Toolkit*¹⁴ recommends use of a permissive statement which is consistent with the Museum's primary concerns of widespread distribution, integrity of information and commercialisation (in limited circumstances). It allows for the public to copy, distribute, display, download and otherwise freely deal with the Museums works for a number of purposes. However, the user must attribute the work on all uses, by including the Australian Museum copyright notice.

The relevant up to date copyright statement for the Australian Museum can be found by clicking on the "Copyright" tab on the website, as indicated in the arrow below.



¹⁴ Prepared by the AGD, NSW and available from the Premiers website at <http://www.premiers.nsw.gov.au/>

Certain uses are excluded from the general permission in order to preserve the integrity of the work and identify circumstances that the Museum may wish to exploit for commercial reasons.

Particular care should be taken when incorporating third party owned copyright material (for example, graphs or photographs) in Museum generated publications. In addition to attribution, a restricted copyright notice should be placed on that copyright material which is consistent with the permission given for its use (refer Figure 2).

5.1.3 Protection of patents and designs owned by the Museum

Although the Museum currently does not hold any registered Patents or Designs, it may develop such IP in the future. This section has been added to deal with such developments. Where a Museum Staff member creates a potentially patentable invention or industrial design they should fill in the IP Disclosure Form (provided as Appendix V to these Guidelines) and submit a copy to their Manager and the IP Policy manager. The Policy Manager, in consultation with the Museum Staff member and the Director, shall initially evaluate the commercialisation potential of this IP. A search of the Australian Patent and/or Design on-line databases shall be conducted by the Policy Manager (or delegate) to assist with this initial evaluation. Depending on the outcome of §5.1.3.4, the Museum shall seek appropriate legal, financial and commercial advice in relation to obtaining adequate patent or design protection.

It is important not to demonstrate, sell or discuss an invention in public before filing a patent application. It is possible to talk to employees, business partners or advisers about an invention but only on a confidential basis. When considering filing an application for a patent, the Museum should seek appropriated legal advice from a registered patent attorney.

5.2 Use of IP owned by Third Party

5.2.1 Use of Trade Marks owned by Third Party

Museum Staff should not use trade marks owned by a third party unless written permission has been given by the third party. In the case of collaborative projects, use of trade marks (or more generally, IP) will usually be addressed, by way of a licensing arrangement, in any partnering agreement.

Where permission is given, limitations to use of third party owned trade marks will normally apply. Specifically limitations with respect to:

- Cost to Museum (if any)
- Period
- Purposes (for example - for the purposes of a specific project, or sponsorship in relation to a particular Museum product, such as Eureka Prizes)
- Associated guidelines for use.

5.2.2 Use of Patents/Designs owned by Third Party

Museum Staff should not use patented inventions or registered designs owned by a third party without seeking permission in the form of a licensing agreement from the owner. Again, where permission is given, limitations to use of third party owned IP will normally apply. Specifically limitations with respect to:

- Cost to Museum (if any)
- Period
- Purposes (for example - for the purposes of research)

Exemption – “Crown Use”

Various provisions of the patents and designs legislation allow the Crown to use, for its purposes, patents and designs owned by third parties, including the use of such IP without first obtaining the authorisation of the owner. The owner must be notified and compensated, but if the owner considers that the proposed compensation is inadequate, they need to apply to a court for a decision on adequate compensation. The underlying purpose of these provisions is that the Crown should not be impeded by patents or designs, from acting in the public interest, particularly in national emergencies. The suitability of these provisions are currently under review by the Federal Government, particularly in light of the widespread corporatisation of government agencies and their involvement in commercial activities. Museum staff should not rely on these provisions without first seeking legal advice, as they are very limited in their scope.

Exemption – “Experimental Use”

There is no explicit provision within the *Patents Act 1990 (Cth)* which supports unlicensed use of patented inventions for experimental purposes, in the ordinary course of research. However, a proposed exemption (www.acip.gov.au) is currently under review by the Federal Government, for inclusion into the Act. This exemption, if accepted, would allow for certain acts to be done for experimental purposes relating to the subject matter of the invention that do not unreasonably conflict with the normal exploitation of a patent. Again this exemption would be limited in its scope, and legal

advice should be sought where Museum Staff intend to use, for any purpose, a patented invention.

5.2.3 Use of Copyright Material owned by Third Party

Permission must be gained to reproduce copyright material, for any purpose, where the Museum does not hold the copyright and where no exemptions apply. The copyright exemptions (that is, certain permitted uses of copyright material) which are especially applicable to the Museum are listed and described as Appendix VI. Procedural guidelines for dealing with copyright works are provided as Appendix VII.

5.2.3.1 How to obtain the right to reproduce a work

(i) Purchasing or being given copyright by the existing owner

Copyright can be bought, given or bequeathed. The purchaser or recipient then has full ownership of copyright in the work and can on-sell it or license other to use it, although the Moral Rights must still be protected (refer to part 5.3 of these Guidelines).

Transfer of the ownership of copyright is known as an assignment.

(ii) Obtaining a license from the copyright owner

A copyright license is a contract that gives defined rights of use, for a defined period of time, in a defined territory. There are three types of licence:

- Exclusive licence – where no-one else may use the work for the purposes that have been approved, including the copyright owner.
- Sole licence – is where the owner and licensee can use the right, but no-one else.
- Non-exclusive licence – is where one person is given a licence to use a work, but other people can be licensed to use the same work. The terms of the licence will define what each licensee may do.

Exclusive licenses must be given in writing, but for better practice all license arrangements should be in writing.

(iii) Gaining permission from the owner to reproduce a work for a particular purpose

For example, the one-off reproduction of a work for the purposes of including it in an exhibition.

(iv) Bequest of a work by the copyright owner

Bequests of works made after 1 May 1969 are read as including the copyright in the work, unless the will makes it clear that this is not the case (s198 of the *Copyright Act (Cth) 1968*).

Requests for permission seeking clearance from a copyright owner must state clearly the use to which the work is to be put, and request text for a copyright credit-line. A model letter and permission agreement is set out in Appendix VIII.

5.3 Moral Rights in respect of Copyright Material

The nature of Moral Rights has been discussed at 3.1.3 of these guidelines. Moral Rights cannot be assigned but they can be waived. In relation to moral rights the law provides that:

- There will be no infringement of right of attribution of authorship if it was reasonable not to identify the author (s195AR)
- There will be no infringement of right of integrity of authorship if derogatory treatment or other action was reasonable (s195AS)
- Certain treatment of works do not constitute an infringement of the author's right of integrity of authorship (s195AT)

5.3.1 Right of Attribution of Authorship

Where copyright material is published, reproduced, performed, communicated to the public, exhibited or adapted, then the Author has the right to be identified as the author, unless it is reasonable not to do so (refer Appendix IX-(a)).

Where there are two or more authors, each joint author has the right of attribution of authorship in respect of the work. The consent of one author to any act or omission affecting his/her Moral rights in respect of the work does not affect the Moral Rights of the other joint author/s in respect of the work.

The Museum will endeavour to identify (attribute) the author of copyright material where possible. However, in order to maintain an effective working environment, and in particular where the operational needs of the Museum require otherwise, then the Museum Staff may not be identified as the author of the work.

The following are examples of when it may be reasonable for the Museum not to identify the author.

- Certain Australian Museum publications will not specify the author, such as for example, fact sheets, certain web content. However certain categories will identify the author, such as – scientific publications, photographs and other works of art
- Where attribution would detract from the official purposes of the work
- Where the development of the work requires the input of several Museum Staff and it would be impractical to identify all the authors of the final product
- Where it is general Museum practice not to attribute the author
- Where there would be difficulty or expense incurred in identifying the author.

5.3.2 Right not to have Authorship Falsely Attributed

A Museum Staff member, as an author of a work has the Moral Right not to have his or her work falsely attributed to someone else.

Museum Staff should not knowingly attribute a work to someone who did not create the work. An act of false attribution includes inserting a person's name so as to falsely imply that that person is the Author of the work or dealing with a work when you know that the person identified as the author is not the author. Museum Staff should also refer to the Museums *Guidelines on Research Practice, 1998*.

5.3.3 Right of Integrity of Authorship

Authors have the right of integrity of authorship in respect of their works. This is a right not to have their work subjected to derogatory treatment. This means that an author has a right not to have their work

- materially distorted, mutilated or materially altered, if such change or alteration would be prejudicial to their honour or reputation;
- altered in any other way that is prejudicial to their honour or reputation ('derogatory treatment');

unless it is reasonable to do so.

Again, there is a defence of "reasonableness" to infringement. A person does not, by subjecting a work to derogatory treatment, infringe the author's right of integrity of authorship in respect of the work, if they can establish that it was reasonable in all circumstances to subject the work to the treatment. (Appendix IX-(a)).

The concept of 'derogatory treatment' focuses on the honour and reputation of the author. Any distortion or alteration of the work must be a material distortion or

alteration. Furthermore, the act or omission does not constitute derogatory treatment unless it is prejudicial to the author's honour or reputation.

Examples of treatment that might be considered derogatory include instances where:

- A substantial part of a literary work is deleted to alter the context and the remaining part is reproduced in a publication without consent;
- The defacement of, or alteration to, an original painting, drawing, or work of artistic craftsmanship; and
- The use of music in association with a film or advertisement that would offend against the known views of the composer.

5.3.4 Consent to Infringement of Moral Rights

The Museum will not infringe the Author's Moral Rights if prior to the use of the work, it obtains the written consent of the Author. Where the Author has genuinely given the written consent, the Museum will not infringe the Author's Moral Rights provided the Act or Omission is within the scope of the written consent of the Author.

If required, Museum Staff may be asked to complete the form of specific consent in relation to Moral Rights provided as Appendix IX-(b), in line with 5.3.3 of the Museums IP Policy. Further information on Moral Rights can be found in the Copyright Council's information sheet at: http://www.copyright.org.au/pdf/acc/infosheets_pdf/G043.pdf

Suggested procedural guidelines for dealing with Moral Rights issues are given in Appendix IX-(c).

6. Commercialisation of Museum owned IP

Like any other business asset, such as equipment, IP rights are highly negotiable and can be used for commercial advantage. IP rights can generally be bought, sold, licensed, given away or made freely and widely accessible.

6.1 Licensing or Assignment of Australian Museum owned IP

6.1.1 Licensing

IP owners may permit others to use their exclusive rights by granting a license in return for payment of a fee or royalty. Licensing is not a transfer of ownership but is a contractual relationship between the licensor (the owner of the IP) and the licensee, in which the licensor gives the licensee a right to use the IP within certain conditions, such as restrictions on how the IP may be used or altered). The license may include restrictions on making the IP available to third parties.

Licences can be exclusive, sole or non-exclusive.

- An exclusive license grants specified rights to the licensee with special privilege that they will not be granted to any other person (it excludes even the IP owner).
- A sole license is one granted to the licensee on the basis that IP owner retains the right to use the IP. The IP owner cannot grant a license to any other person other than the original licensee.
- A non-exclusive license permits the licensee to exercise one or more of the copyright owner's exclusive rights in a work. The licensor can grant a non-exclusive license for a specified period and grant more than one non-exclusive license.

While licenses do not necessarily need to be written, and can be in the form of oral consent or permission, it is better practice to obtain written agreements. IP Australia has included a '*Sample Licence Agreement*' on its website. This can be at:

http://www.iptoolbox.gov.au/media/PDFs/licence_agreement.pdf

A licence agreement checklist is provided in these Guidelines as Appendix X. Licensing of Crown copyright (generated by the Australian Museum) must be approved by the Director.

6.1.2 Assignment

An assignment involves the transfer of ownership, often for a price, of IP. When owners (assignors) assign their IP, they transfer the IP ownership to the purchaser (the assignee) and keep no ownership rights for themselves. An assignment cannot be reversed, unless a further assignment back to the original owner is executed.

A sample Deed of Assignment for a registered trade mark is included as Appendix XI. Legal advice should be sought when drafting and executing a Deed of Assignment. Assignments of registered IP (trade marks, patents and designs) should be recorded on the relevant registers maintained by IP Australia. Assignment of Crown copyright (generated by the Australian Museum) must be authorised by the Director.

6.2 Licensing or Assignment of 'Excluded Copyright Works'

The NSW State policy at present indicates that in the case of Crown copyright (only), the Attorney General (NSW) must authorize assignments and licensing arrangements. The IP Framework recommends licensing as the preferred option in relation to the States IP.

This section has been included to address the journal articles, conference papers, books (or book chapters, all being for educational purposes) where copyright is required to be assigned (or licensed) to the publisher to allow for publication, which otherwise would require the Attorney Generals approval. Appropriate delegation with respect to this section was received from the Attorney General in May 2008, for a period of two years, and with a number of conditions imposed. The current procedure for this section is included as Appendix XII.

7. Indigenous Material

The Museum recognises that Commonwealth IP law does not address all issues in relation to use and protection of Indigenous cultural material and traditional knowledge. For instance, the rights which exist under customary law are often unrecognised in established categories of IP law. The Australian Museum is considering separate Guidelines and procedure in relation to the use of Indigenous cultural material to guide Museum staff.

8. Appendices

Appendix I: Further Information and Reading

Using IP in your business - <http://www.iptoolbox.gov.au/>

Intellectual Property Management Framework for the NSW Public Sector - http://www.premiers.nsw.gov.au/our_library/business/intellectualproperty05.pdf

Copyright Council – General Website - <http://www.copyright.org.au/>

Copyright Council – <http://www.copyright.org.au/publications/infosheets.htm>

IP Australia – <http://www.ipaustralia.gov.au> (for patent, trade mark and design information).

Domain names - <http://www.auda.org.au>

Copyright and Cultural Institutions: Guidelines for Digitisation by Emily Hudson and Andrew T Kenyon, 2005. ISBN 0 7340 3547 0. Available from www.ipria.org.

Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections, by Emily Hudson. Available from www.ipria.org.

Appendix II: Extract from NSW Gov. Personnel Handbook, Sept. 2005

- the benefits or detriment likely to accrue to others;
- the costs of the adjustment and the financial situation of the department;
 - in the case of the provision of services or the making available of facilities, the existence of an action plan given to the *Human Rights and Equal Opportunity Commission (Disability) Discrimination Act 1992* (Commonwealth).

No single factor alone is likely to constitute unjustifiable hardship.

5-9 Private employment

5-9.1 Sources of authority

- *Public Sector Employment and Management Act 2002*
- *Public Sector Employment and Management (General) Regulation 1996*

5-9.1.1 Statutory provisions

Section 59 of the *PSEM Act 2002* provides that:

- (1) A person employed in the Public Service is not to undertake any other paid work without the permission of the appropriate Department Head.
- (2) This section does not apply:
 - (a) to a casual employee, or
 - (b) to a person working part-time,

during the period that the person is not required to discharge duties in the Public Service, but only if the discharge of those duties is not adversely affected and no conflict of interest applies.

5-9.2 General policy

Employees may not engage in any form of paid employment outside their official duties without the prior approval of their department head.

The prohibition against undertaking private employment continues during any period of leave, whether the leave is paid or unpaid, and applies to all employees.

5-9.2.1 Disciplinary action

An employee who fails to comply with the requirements of section 59 may incur disciplinary action under section 43 of the *PSEM Act 2002* (in the case of an officer). A temporary employee failing to comply with the requirements of section 59 may have their services dispensed with in accordance with section 30 of the *PSEM Act 2002*.

5-9.2.2 Authority to approve or decline applications

Department heads have the authority under the *PSEM Act 2002* to approve or decline applications from employees seeking to engage in private employment or extra-official activities including lecturing, tutoring and demonstration work. The decision to approve or decline is to be made in accordance with the principles below.

5-9.3 Approvals

An employee seeking approval to engage in private employment or to significantly vary existing approvals must submit written information concerning the nature of the employment and the time involved. This information should be accompanied by an assurance in writing, that:

- (a) the work does not arise from, nor will it interfere with, the employee's official duties;
- (b) the work will not involve a conflict of interest with the employee's official duties;
- (c) the work will be undertaken outside working hours;
- (d) no relevant information has been withheld in relation to (a), (b) and (c); and

- (e) the arrangements will not be varied without further application.

An applicant is not required to divulge any personal circumstances associated with the application to engage in private employment.

Approval to engage in private employment other than in the employee's own time will only be granted in exceptional circumstances. Approval is subject to *5-9.5 Payment for private employment*.

Generally part time employees may engage in private employment outside their hours of duty but approvals are subject to the guiding principles specified above.

5-9.4 Work with government agencies and international agencies

See *6-9.4.1 Working with the NSW and other governments or international organisations*.

5-9.5 Payment for private employment

Payment received by an employee for undertaking activities, either during or outside normal working hours, which are part of that person's or employee's duties and responsibilities, must be paid in full to the Crown.

Payment received by employees for undertaking activities which are not part of their normal duties and:

- *the activity is during normal working hours and the employee is considered to be on duty or acting as a representative of the department; or*
- *the activity is outside normal working hours but the employee is acting as a representative of the department,*
is to be paid in full to the Crown.

Payment received by employees for undertaking activities which are not part of their normal duties and

- *when the activity is outside normal working hours; or*
- *the activity is during normal working hours but the employee is on recreation leave, extended leave or leave without pay; and*
- *the employee is not acting as a representative of the department,*
may be retained by the employee.

5-9.6 Specific private employment activities

5-9.6.1 General

Policies for specific activities are set out as follows and, if payment is involved, the appropriate provisions apply.

5-9.6.2 Lecturing, teaching, tutoring, demonstration, and the like

Employees may make themselves available to provide expert knowledge in the form of lecturing, teaching, tutoring or demonstration for universities, institutions under the Department of Education and Training, recognised professional associations, and generally recognised educational bodies.

If these activities form part of the employee's official duties, and the activity is during normal working hours, departmental approval must be obtained for leave of absence from the work place.

If the activities form part of the employee's official duties, and the activity is outside normal working hours, departmental approval must be obtained. The department may choose to grant time in lieu for these approved out of hours activities.

If the activities do not form part of the employee's official duties, and the activity is undertaken during normal working hours, approval will be conditional upon:

- (i) the institution certifying that it requires the services of the employee;
- (ii) the period of employment being of a temporary nature and subject to periodic review until such time as the institution has been able to obtain a suitable replacement;

Appendix III: Trade Mark IP Datasheet

1. Trade Mark representation and function

Insert representation of trade mark.

Goods and services to be covered by the trade mark.

2. Date

Specify the date of first use and the intended duration of use (if known).

3. Registration

Specify whether registration is recommended by Manager. If registration is recommended then an initial assessment of the registrability of the mark will be carried out by the IP Policy Manager (or delegate) in line with 5.1.1.2 of the IP policy.

4. Originator

Name the author of the trade mark and whether the author is a Museum Employee (refer to definition in the Museum IP Policy) at the date of the development of the trade mark. If not a Museum Employee, provide details of the relevant contract.

5. Licensing

If the Museum has licensed the trade mark to others, give details of the licensing agreement.

6. Links

Insert TRIM file reference number and any related contracts.

7. Critical Dates

Specify (as appropriate):

- the expiry/renewal dates for registration;
- where trade mark registration is underway, any interim deadlines;
- where the trade mark has been licensed by the Museum to others, dates of the expiry/renewal under the licensing agreement.

8. Data on value of Trade Mark

Specify (if known/applicable):

- Cost of acquisition/development
- Amounts payable to Museum under any licensing agreement.
- Specify utility rating to Museum function:

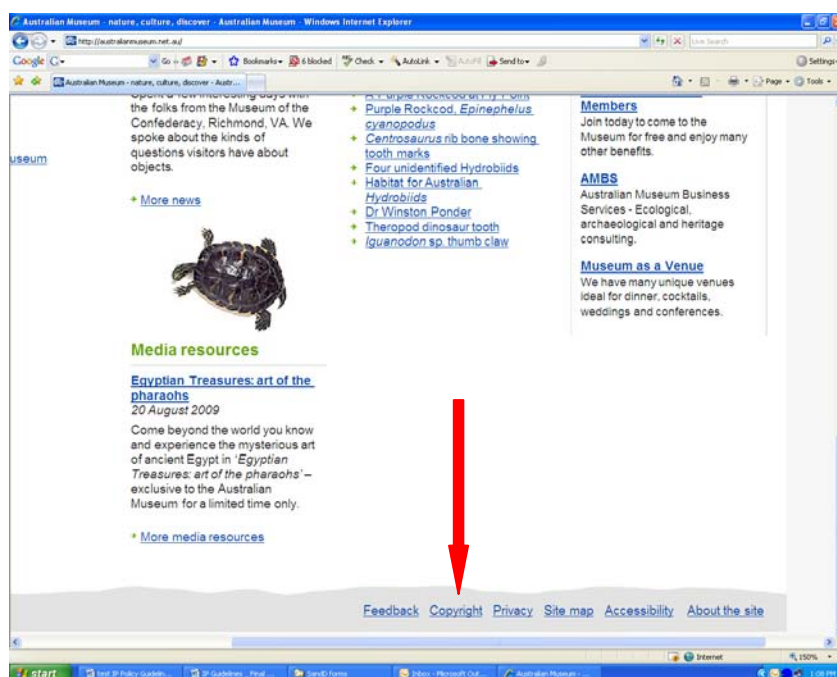
Critical	<input type="checkbox"/>
Useful but readily substituted	<input type="checkbox"/>
Not critical	<input type="checkbox"/>
- Public benefit rating: high/moderate/low
- Commercial benefit rating: high/moderate/low

8. Notes

Insert any additional relevant data. For example, is the trade mark jointly owned?

Appendix IV: Australian Museum On-line Copyright Statement

The relevant up to date copyright statement for the Australian Museum can be found by clicking on the “Copyright” tab on the website, as indicated in the arrow below.



Appendix V: IP Disclosure Form – Patents & Designs

STRICTLY CONFIDENTIAL - *This form is to be completed in all cases where IP has been created by a Museum Staff member which he/she considers may be of commercial value, and which may potentially be registered as a patent or a design. If you have any queries please call the Policy Manager on (02) 9320 XXXX.*

Name of Creator(s): (1) _____

(2) _____

(3) _____

Unit: _____

Unit Manager: _____

Phone: _____ Email: _____

1. Category of invention/design

- ☐ A new product ☐ An improvement to an existing product / technology
- ☐ A new technology ☐ A new use for an existing product / technology
- ☐ A new process ☐ A novel and distinctive design
- ☐ Other category (please specify) _____

2. Creator details *(Please use Appendix Sheet if this space is insufficient)*

“Creator” means only those who contributed actively to the core **“Inventive step”** in relation to a potentially patentable invention. It does not automatically include other team members. In relation to a Design, “creator” means the designer(s).

Full Name			
Unit:			
Phone:			
Email:			
Status (Employee/student etc):			
Contribution to IP development:			

3. Detailed description *(please use Appendix Sheets if this space is insufficient)*

Please attach a detailed description of the invention/design including any relevant manuscripts, sketches, drawings or photographs to illustrate the concept/design.

In the case of a potentially patentable invention only, please complete the following:

- a) History of the Invention:
- b) Prime Features of the Invention – consider what makes it novel and inventive:
- c) Background (status of existing technology and how this invention distinguishes itself):
- d) Utility – list all of the possible uses for the Invention
- e) Please list any of the modifications and improvements that you can foresee for the Invention.

4. Prior Art

Please give details, with references if possible, of patent applications, key scientific literature and/or public oral communications, both your own and that of others, covering the state of the art prior to the date of the development of your invention/design.

To enable a database search please provide a list of key words.

5. Disclosures *(eg. public discussions or publications)*

Please give details of any disclosures (such as publications, presentations or discussions with academia or industry including grant applications) past or those planned for the near future, regarding the invention/design, stating whether they were under confidentiality agreement (please attach relevant publications). **Disclosures not covered under a confidentiality agreement may prevent patenting or registration of a design.**

Type of Disclosure	Confidentiality Yes/No	Description or Title Venue or Occasion, etc	Geographical location / date

6. Development Status *(please tick appropriate box)*

What is the development status of the invention/design?

☐ Projected ☐ Early ☐ Intermediate ☐ Finished ☐ Prototype available

7. Research funding/Grants/Assistance

Please give details of the main source of funding (if any) for the research/work generating the invention/design:

Type of funding	✓	Start date	End date
ARC Grant			
NH&MRC Grant			
Other Grant - Please Specify			
Collaboration			
Other			

Sponsors

Company Name:		2.
Contact Name:		
Phone:		
Fax:		
Title:		
Reference No:		

Please give details of any other assistance received including finance, collaborative resources, equipment, services in kind, special materials and / or know-how.

8. Commercial application and value

a) Have there been any attempts to commercialise this invention/design? ☐ Yes, ☐ No

b) Please indicate, if possible, what you see as the commercial application and value in your invention/design.

9. Competing products

Do you know of any competing products, inventions, designs or ideas on the market? If 'YES', please identify them/their manufacturer, and indicate why yours superior?

10. Potential collaborators/licensees

What kind of company do you think would be interested in a License?

Can you suggest any countries or specific companies we should include when marketing this invention? (please include a personal contact and a job title if you have one)

Does the invention involve the use of technology licensed from a Third Party or protected by confidentiality agreements? ☐ Yes, ☐ No

11. Other information

Forms can be inadvertently restrictive. Is there any other information which you consider should be on record concerning the invention/design? If so, please attach/detail below:

Signature: _____ Date: _____

Please retain a copy of this form for yourself and submit a copy to your Manager. Please submit the original to:

The IP Policy Manager
Australian Museum
6 College Street
SYDNEY NSW 2010

Telephone: (02) 9320 XXXX Facsimile: (02) 9320 XXXX Email: XXXX@austmus.gov.au

12. For Completion by IP Policy Manager:

Date Received: _____

Appendix VI: Permitted Uses of Third Party's Copyright Material

You will not need permission if what you are using is not a 'substantial part' of the copyright material. Even a very small part of the original may be a 'substantial part' – there is no set percentage. The relevant question is whether what has been used is important, essential or distinctive to the original work.

Some Museum activities that would otherwise infringe copyright may be permitted in some cases. There are other exemptions contained within the *Copyright Act 1968 (Cth)*. However, only those most relevant to the Museum are described below.

(i) Fair Dealing

There are a number of situations in which people can use copyright material without permission of the copyright owner ('fair dealing'). A person can make a 'fair dealing' with copyright material for any of the following purposes:

Research or study

Criticism or review

Parody or satire

Reporting news; or

Professional advice by a lawyer, patent attorney or trade mark attorney.

Whether an exercise of copyright rights amounts to a fair dealing is a matter to be determined on the facts of each case. Many factors may be taken into account. In the case of reproduction for research or study the factors include: the purpose and character of the use, the nature of the work or other subject-matter, the amount and substantiality of the portion copied, the possibility of obtaining the work within a reasonable time at an ordinary commercial price and the effect on the commercial value of the work or other subject-matter. In general, a person or organisation can only rely on a fair dealing defence for their own use of copyright material. For example, it would not be regarded as a fair dealing for criticism or review to reproduce a collection of photographs and invite other people to critique the photographs. Rather, the person making the reproduction must themselves be making the criticism or review.

The fair dealing provisions are contained in the following sections of the *Copyright Act 1968 (Cth)* – ss40-42 and s103. The Australian Copyright Council has issued an information sheet (G079) on this topic.

(ii) Copying for Preservation or Administrative Purposes

Museums and galleries are entitled to reproduce original artworks and original manuscripts in their collection to preserve them against loss or deterioration. They can also communicate a 'preservation reproduction' of original artworks on computers on the premises, if the original has been lost or deteriorated so much that cannot be displayed without significant risk of further damage.

You may reproduce any work held in the collection for 'administrative purposes'. Cataloguing or insurance purposes are likely to be examples of 'administrative purposes'.

These provisions are contained in the following sections of the *Copyright Act 1968 (Cth)* – ss51, 110 and 112.

(iii) Libraries and Archives

There are special provisions in the *Copyright Act 1968 (Cth)* which staff of libraries and archives to reproduce and communicate copyright material from books, periodicals and some other formats for certain purposes without permission from the copyright owner. These include certain provision pertaining to copying for clients' research or study, copying old unpublished material for publication, copying for other libraries, copying for preservation, copying for preservation, copying to replace lost, stole or damaged items, administrative purposes and maintaining or operating the library. Museum Staff other those working in the Museum library or archives should not rely on these provisions without consulting the IP Policy Manager.

These provisions are contained in Division 5 of the *Copyright Act 1968 (Cth)*. The Australian Copyright Council has issued an information sheet (G049) on this topic.

(iv) Government Use of Copyright Material

Governments have greater rights to use copyright material than other users. The *Copyright Act 1968 (Cth)* (at s183) provides that the Commonwealth or the State does not infringe copyright by anything done 'for the services of the Commonwealth or the State'. This means that governments can use copyright material for government purposes. However, this use is not necessarily free, as the copyright owner is entitled to require payment. This exemption should be treated with caution by the Museum. The Act does not provide any guidance as to the meaning of 'for the services of the Commonwealth or the State'. It is likely that not every use of copyright material by the Museum can be made under s183, but rather those that are governmental in nature and where there is some element of public interest involved. If in doubt, ask permission of the owner of copyright, or seek legal advice.

Appendix VII: Procedural Guidelines for Dealing with Copyright Works

Before you copy any work, you must ask yourself the following things:

- Is this work, or the part I wish to copy, something which could be protected by copyright?
- If so, has copyright expired?
- If copyright still exists, who is the owner?

1. Would what you want to do breach copyright if you did it to a copyright work without permission?

First refer to 3.1 of these Guidelines and the Copyright Act.

If *Yes*, go to question 2.

If *No*, consider the moral rights issues (see Appendix IX) and proceed.

2. Is the work protected by copyright – i.e. eligible for protection and the copyright period unexpired?

Again refer to 3.1 of these Guidelines and the Copyright Act.

If *Yes*, go to question 3.

If *No*, proceed without concern for copyright, but consider whether moral rights issues still apply.

3. Does the Museum own the copyright?

If *Yes*, consider the moral rights issues, then proceed without concern about copyright, apart from ensuring that the Museums rights are protected.

If *No*, go to 4.

4. If the Museum does not own the copyright, can you identify who does?

The answer may not be straightforward.

If Yes, go to 5.

If No, go to 7.

5. Is it necessary to approach the copyright owner for permission to do what you want to do?

Consider whether any of the exemptions listed in Appendix VI apply (that is, *Permitted Uses of Third Party owned Copyright Material*) to your proposed use.

If Yes, go to 6.

If No, consider the moral rights issues, and then proceed without concern about copyright, except to acknowledge the copyright owner.

6. Approach the copyright owner for permission to do whatever it is you intend to do.

Use the sample request in Appendix VIII as a model. Negotiate a copyright fee as necessary. Specify in your request all the uses which you intend for the work, and for which you are seeking clearance.

Where on-going/multiple uses are required you may wish to consider licensing or assignment arrangements (Refer Section 6 of these Guidelines).

7. If you cannot establish who the copyright owner is, you need to make a judgment about the risk to the Museum if you proceed.

Ask yourself the following questions:

- Have I made a concerted effort to locate the owner, and can I provide documentation to evidence this?
- Is the use 'outside use' which is likely to attract a lot of publicity or attention, or is it for internal Museum uses?
- Is the use of the work the kind which has given rise to copyright disputes in the past, either at the Museum or elsewhere?

There is no straightforward answer as to how proceed in this situation, except to identify the risk and consider whether the Museum is comfortable with the identified level of this risk before proceeding.

Appendix VIII: Model Forms, Suggested Contractual Clauses

1. Model Letter/Form

(a) Permission request letter – Edit as appropriate

[Copyright Owners Name & Address, Date]

Re: Request for Permission by the Australian Museum to Reproduce **[identify the copyright material – 'XXX']** for the purposes of **[YYY]**.

Dear

The Australian Museum acknowledges that **[Copyright Owners Name]** is the copyright owner of **[XXX]**.

The Australian Museum respectfully requests your permission to reproduce **[XXX]** for the purposes of **[YYY]**. A copy of **[XXX]** will be held in the Museums information system for internal purposes only. The Museum will seek a further copyright clearance from you if we wish to reproduce it again in the future.

OR

The Australian Museum requests that you grant to the Australian Museum a non-exclusive, world-wide, royalty-free license to copy, edit, display and distribute, in either electronic or hardcopy format **[XXX]** for **[YYY]**.

OR

...

We would appreciate it if you could provide us with any information (which you require to be incorporated on a label), (which will be accompany the displayed work)...as appropriate.

Alternatively, the following acknowledgement will be incorporated on a label which will accompany the reproduction of **[XXX]**:

Courtesy of **[Copyright Owners Name]**

We hope that you will agree to the Australian Museum's use of **[XXX]**.

If this is acceptable, please acknowledge by signing the attached permission form, and returning to my attention. Thank you and if you have any questions, please do not hesitate to call me immediately at **[Phone #]**.

Sincerely yours,

[Employee's Name]

(b) Permission agreement – Edit as appropriate

Australian Museum

Copyright Permission

I give permission for the Australian Museum to reproduce the following image for the purposes of **[YYY]**:

Insert details of **[XXX]** – can be attached as a schedule to the permission agreement.

I agree that a copy of this image will be used for **[YYY]**.

The following acknowledgement will accompany the display of **[XXX]**:

Courtesy of **[Copyright Owners Name]**

PERMISSION GRANTED:

Signature of Copyright Owner: _____

Name of Copyright Owner _____

Date: _____

Please sign and return this form.

2. Suggested Contractual Clauses

Further information on Copyright and suggested contractual clauses regarding copyright material can be found at:

- Office of Information and Communications Technology of the Department of Commerce (Information Management – Copyright Guideline (April 2004)

http://www.oit.nsw.gov.au/docs/IM_Copyright_0404.pdf

- *Guidelines for the Engagement and Use of Consultants* (Version 4 July 2004) and the *Consultant Agreement Guide Notes* (Revised March 2005) issued by the Premiers Department NSW

<http://www.premiers.nsw.gov.au>

- IP Australia maintains an 'Agreement Generator' tool which can be used to assist in drafting agreements in relation to IP (<http://www.iptoolbox.gov.au/>). This tool should be used cautiously and should not be used to replace legal advice.
- Copyright Council – Information Sheet G024

Appendix IX-(a) Exceptions to Author's Moral Rights – When is it considered 'reasonable'?

An author's right of attribution is not infringed if it was reasonable in all circumstances not to identify the author. Similarly, a person does not, by subjecting a work to derogatory treatment, infringe the author's right of integrity of authorship in respect of the work, if they can establish that it was reasonable in all circumstances to subject the work to the treatment. Common factors which are to be taken into account in determining whether an action was reasonable for both infringement of the right of integrity and the right of attribution are:

- 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 Museum that relevant to the work or the use of the work
- Any common practice (in the industry) in which the work is used, that is relevant to the work or the use of the work.

Additional factors which are to be taken into account in determining whether an action was reasonable for infringement of the right of integrity and attribution are:

(a) Right of Integrity –

- Whether the work was made by an Employee of Contractor/Consultant to the Museum;
- Whether the treatment was required by law or was otherwise necessary to avoid any breach of the law; and
- If the work has two or more authors, their views about the failure to identify them, or about the treatment of the work, as the case may be.

(b) Right of Attribution –

- The difficulty or expense that would be incurred as a result of identifying the author.

Appendix IX-(b): Exceptions to Author's Moral Rights – Consent

FORM OF SPECIFIC CONSENT

(For use by Museum Staff)

*(This form can also be used for Contractors/Consultants, although
it is better to deal with this in the Engagement Contract)*

To: Director
Australian Museum
6 College Street
Sydney
NSW 2010

1. I acknowledge that I give this consent in relation to the possible infringement of my rights of integrity and attribution in the following work:

[Specify the work whether existing or in the process of being made]

2. In accordance with S. 195 AWA (3)[195AW(2) for film] of the *Copyright Act 1968 (Cth)* I consent to the State of New South Wales through the Australian Museum undertaking the following acts or omissions in relation to the specified works whether occurring before or after the date of this consent:

*[Specify the specific acts or omissions or the specific
classes or types of acts or omissions consented to]*

3. This consent is a genuine consent given without duress or undue influence.

.....

Print name of Museum Staff

.....

Signature of Museum Staff

Appendix IX-(c): Procedural Guidelines for Dealing with Moral Rights Issues

In all cases consult the *Copyright Act 1968 (Cth)*, the Museums IP policy and these guidelines. If in doubt, seek legal advice.

1. Could what you want to do breach an author's moral rights?

If Yes, go to question 2.

If No, continue.

2. Is the work protected by copyright?

If Yes, go to question 3.

If No, continue.

3. Is the author alive?

If Yes, go to question 4.

If No, consider whether your proposed action is 'reasonable' in the circumstances (refer Appendix IX(a)).

4. Consult with the author and obtain their consent to do what you want to do?

This consent should always be in writing (refer Appendix IX(b)). Retain a copy for your permanent record. Proceed.

Appendix X: Drafting a Licence Agreement – Checklist

Drafting a Licence Agreement	Yes	No	N/A
Names			
Are the names of all parties to the agreement including ACN and ABN numbers (where applicable) listed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Addresses			
Are the full addresses of all registered offices/principal places of business of the parties listed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Licensed property			
Is an exhaustive list of the IP subject to the licence agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type of license			
Does the licence agreement clearly state the type of licence which is subject of the agreement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Licensed Territory			
Is the geographical territory for which the licence applies clearly stated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Term of license			
Does the licence agreement specify the expiration date or term of the licence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Termination			
Does the licence agreement contain appropriate termination clauses and obligations of each party or termination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Governing Law			
Does the licence agreement specify which law governs the licence, especially in the case of dispute?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Improvements			
Does the licence agreement envisage any improvements made in relation to the licensed property and provide for such improvements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Royalties			
Does the licence agreement provide fully for royalty payments including calculation of royalties and currency in which the royalties are paid?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligations of licensee			
Does the licence agreement clearly list all obligations of the licensee under the licence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligations of licensor			
Does the license agreement clearly list all obligations of the licensor under the licence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Product liability			
Does the license agreement provide for product liability including product liability insurance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IP Expenses			
Does the license agreement provide for product liability including product liability insurance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appendix XI: Assignment Deed

SAMPLE DEED OF TRADE MARK ASSIGNMENT

THIS DEED IS MADE on the of200....

BETWEEN: [insert name] (ACN [insert if applicable]), a company having its principal place of business at [insert address] OR of [insert address] ("Assignor").

AND: [insert name] (ACN [insert if applicable]), a company having its principal place of business at [insert address] OR of [insert address] ("Assignee").

RECITALS:

The Assignor is the owner of the Australian Registered Trade Mark set out in the Schedule ("the Trade Mark").

The Assignor has agreed for the sum of \$1.00 (receipt of which is acknowledged) to assign the Trade Mark to the Assignee.

ASSIGNMENT

The Assignor, as legal and beneficial owner of the Trade Mark, assigns the whole of its title to and rights in the Trade Mark to the Assignee, absolutely and free of any encumbrance, on the terms of this Deed, with effect from the date of this Deed.

The assignment set out in clause 1.1 includes the assignment of the right to bring legal proceedings, and to obtain any relief to which the Assignor would have been entitled but for this clause, in respect of any infringement of the Trade Mark occurring before or after the date of this Deed.

The Assignor agrees to give the Assignee any assistance reasonably required by the Assignee in relation to the recordal of the assignment of the Trade Mark, including the provision or execution of any document reasonably required by the Assignee. The Assignor irrevocably appoints the Assignee its attorney to do all acts and execute all documents which the Assignor is obliged to do or execute by this clause.

'Encumbrance' includes any trust, charge, mortgage, and any right or interest granted to secure any debt, obligation or liability.

GENERAL

This Deed (and the validity and enforceability of this Deed) is governed by and to be interpreted in accordance with the law of the State of [insert]. The parties submit to

the exclusive jurisdiction of the courts of [insert], and the federal courts of the Commonwealth of Australia. Any stamp duty or other government charges payable in respect of this Deed or the transactions contemplated by it shall be payable by the Assignee.

AUTHORITY TO EXECUTE

Each of the parties warrants its power to enter into this Deed. Any individual executing this Deed on behalf of a party warrants that he or she has been fully empowered to execute this Deed and that all necessary action to authorise execution of this Deed has been taken.

SCHEDULE

Signed, sealed and delivered by
Insert name of Assignor (individual)

signature
in the presence of

Signature of witness

Name of witness

Date:

Signed, sealed and delivered by
Insert name of Assignee (individual)

Signature of Assignee
in the presence of

Signature of witness

Name of witness

Date:

Appendix XII: Procedural Guidelines for Dealing with 'Excluded Copyright Works'

Before proceeding, you should first establish whether the work is protected by Crown Copyright. For example, has it been prepared by a Museum Employee or 'under the direction or control' of the Museum. This may not be straightforward to establish. A good starting point is to refer to 3.1.2 and 4.2.1 of these guidelines.

1. Does the work which is protected as Crown Copyright fall within the IP Policy definition of an 'Excluded Copyright Work'?

If Yes, go to question 2.

If No, consider other obligations which may exist (such as contractual or project agreements) and observe the Procedural Guidelines for Moral Rights.

Where copyright is owned jointly by the Crown and another party, then proceed as if the answer to Question 1 is Yes.

2. Does the work contain any information which is sensitive, commercially or otherwise, which suggests that copyright should be kept under the Museums control?

If Yes, consult with IP Policy Manager and proceed as advised.

If No, go to question 3.

3. Has the IP Policy Manager, or delegate, been advised of the intended publication?

If Yes, proceed as advised. If No, the responsible Museum author should notify the IP Policy Manager by email including the following information:

Document to be published

Publishing Agreement Form (which may be a licence or an assignment)

The email should include the following request: 'I hereby seek approval to assign/licence the copyright in the attached article "[Title of Article]" by [Author(s)], to be published in [Journal Name]". Where copyright is jointly owned, any agreements or arrangements should be included in the email.

The IP Policy Manager will approve or request further information (as appropriate) and the Excluded Copyright Work will be listed in the IP Register. The author can then execute the Publishing Agreement. The author should retain copies of the emails and the executed Publishing Agreement.