



Force Policy

Document title: Intellectual Property Rights

Document Reference: 15/334

Owner: Procurement, Finance and Business Services

Review date: October 2022

Next Review Date: October 2024

***This Force policy is suitable for public disclosure under the
Freedom of Information Act 2000***

This document sets out principles to help guide decision making and in some parts may be quite prescriptive. However, it is vital that officers and staff have the freedom to innovate, exercise discretion and take risk based decisions centred on the needs of the victim and the merits of each case.

There may be occasions when a member of staff is considered to have acted outside of the content of this document but if they have done so with honesty, integrity and professionalism, to make the best decision for the community we serve, they will be trusted and supported. On the occasions when this is the case, the rationale for it must be properly recorded.

This document should be read in conjunction with the Force Policy Statement.

Introduction

Types of Intellectual Property Rights (IPR)

Intellectual Property (IP) is an umbrella term which is used to describe a range of legal rights that attach to certain types of information and their ideas and to their particular forms of expression. IP covers all non-tangible assets of forces such as force logos, processes used and any training courses created by the force.

IP rights fall into two general categories: -

Registered Rights

These are granted on application to an official body such as the UK Intellectual Property Office. Registered rights are monopoly rights, which mean that, once registered: -

- i. The owner can stop others from using the right without permission.
- ii. Allows the owner to take legal action against anyone who uses the right without permission.

Examples include: -

Patents – provide a legally protectable monopoly over interventions and protect new and inventive technical features of products and processes. Patents exclude computer programs and method of doing business.

Trade marks (registered) – brand names, company logos

A registered trade mark allows Trading Standard Officers or police to bring criminal charges against counterfeiters if they use the trade mark without permission.

The logo of Derbyshire Police is a reregistered trade mark, which means they can let other parties have licence allowing them to use it.

Designs (registered) – protect the appearance of the whole or part of a product. The design must be novel, of individual character and not excluded by statute.

Unregistered rights

These arise automatically and give protection against copying or using the right. Examples include: -

Copyright – is automatic and does not have to be applied for and includes literary works such as computer programmes and instruction manuals, broadcasts, original artistic, musical and dramatical works. Copyright lasts for 70 years after the death of the author of any artistic and literary works and 50 years from the date of publication in respect of sound recordings and broadcasts.

Design rights (unregistered)

Trade marks (unregistered) – the goodwill in an unregistered trade mark can be protected in an action for “passing off”. This requires proof of a reputation in the mark, a misrepresentation that could mislead the public and proof of damage, for example financial loss or damage to goodwill. An action for passing off can be both difficult to prove and expensive. The logo of Derbyshire Constabulary is unregistered, so if it is decided at a future date that the logos will be licensed to force suppliers, then the logo will need to be registered.

Confidential Information – Confidential information is also known as “know how” and can be described as technical/practical information resulting from experience which is: -

- i. Secret – not in the public domain and to remain confidential.
- ii. Substantial – has the ability to improve the competitive edge of the owner.
- iii. Identified – recorded in some format.

Aims and Objectives

Derbyshire Constabulary needs to be aware of the different IP rights to ensure they: -

- i. Protect anything new they create.
- ii. Maximise their position in relation to any income generation opportunities involving IPR.
- iii. Avoid infringing the IP rights of other people and organisations.
- iv. Can reserve the right to approve images, content or product prior to use or distribution by a third party.

The aim of this policy is to ensure IPR is managed efficiently and consistently to achieve benefit maximisation and commercial protection.

This policy targets the departments and personnel where the management of IPR activity has been identified as being prevalent and to ensure all principal parties are aware of their obligations and actions in relation to this policy.

The principal departments and personnel are as follows: -

- i. Operational Contract Owners (OCOs);
- ii. Corporate Communications;
- iii. All police officers and staff – in particular with regard to copyright;
- iv. Legal services – for consultation and advice.

Procedures

The Procurement Process

The use of specific and appropriate clauses in the Terms and Conditions of a Contract between the force and third parties legally protect the forces in relation to intellectual property rights in the following manner: -

- i) Ensures that IPR is secured, protected and remains the property of the force wherever appropriate.
- ii) Ensures the force has the legal right to use any licence applicable to the IPR and to assign that use to other parties.
- iii) Ensures that force does not infringe any IPR in any contract deliverables.
- iv) Financially protects and indemnifies the force against any claims in respect of the misuse of IPR.

When tendering for contracts above £25k in value, the force will apply different terms and conditions on contract depending on the type of contract being let.

There are five different types of contract conditions, for: -

- i) Works
- ii) Services
- iii) Goods
- iv) Goods and services
- v) Information technology

Each set of conditions contain clauses dealing with IPR in proportion to the risk inherent in that type of contract.

There may be instances where further contract conditions need to be identified and included in the Invitation to Tender document. These would form part of any Special Conditions applicable to a future contract. Legal Services should be consulted prior to the addition of any special conditions.

The Procurement Unit will identify any future IPR issues within a future contract when liaising with the OCO at the start of the procurement process. IPR issues will be recorded in the Statement of Requirement (SOR).

Once the SOR is passed to the Procurement Unit for procurement action, the IPR requirements of the contract will be further developed and defined in the formulation of the Procurement Strategy for the project. This will ensure that the correct Terms and Conditions of Contract are applied at the tender stage and identify how IPR will be managed and monitored by the ICO throughout the life of the contract.

Intellectual property can be a complex area and Legal Services should always be consulted by Procurement Services at the strategy stage. The different negotiation options available for a future contract are as follows: -

- i) Option 1 – the service provider owns all newly created IP and then licences it to the force for internal use.
- ii) Option 2 – joint ownership. If the force is unwilling to agree to Option 1 the next option is to propose joint ownership of the custom components and all IP rights in them. This option can have significant complexities and it is important to define the rights of each party to exploit the jointly owned deliverables prior to any agreement.
- iii) Option 3 – service provider retains ownership of patent rights but grants a copyright licence to the force and also licences the force to use any patent rights. This option enables the service provider to reuse their idea for other customers but prevents them using specific custom components developed for the force.
- iv) Option 4 – the force owns all newly created IP and grant the service provider broad use and sub licence rights, possibly subject to reasonable restrictions. The benefits being that the force obtains the ownership they want, while the service provider has similar user rights as if it had retained ownership.
- v) Option 5 – a menu approach. This would involve Procurement Services issuing an IP clause in the Invitation to Tender document that lists all potential options for IP ownership but states the option that will apply.
- vi) Option 6 – the force owns all newly created IP and the service provider retains no rights. This is the most beneficial option for the force but will only be acceptable to the provider when other options have failed and they are keen to win the contract. The main disadvantage is that it discourages an innovation from the provider as it cuts them out of any future market.

The Terms and Conditions of Contract applicable to any agreement are communicated to the tenderers at the tender stage to ensure they become part of the future legally binding agreement between the force and contractor.

The types of contract where IPR may be prevalent are as follows: -

- i) **Software Purchases** – Unless the force represents, of itself, a large proportion of the total market for a particular piece of software, it is unlikely that the supplier will accept a transfer of IPR to the force. This is normal practice and will be acceptable if other conditions of supply/purchase are not onerous. If the IPR is not transferring to the force, it may be necessary, if the contract is identified at the strategy stage as high risk in terms of business continuity, to enter into an Escrow agreement in respect of the source code, in case the supplier fails.
- ii) **Combined Software and Consultancy – bespoke developments** – When third parties are involved in producing software for the force or for a partnership arrangement where the force

is a major partner, then the issue of IPR ownership must be specifically considered at the outset of the procurement process or relationship. This will be identified by the force at the Procurement Strategy stage. In general terms and if reasonable, the force will ensure the terms and conditions applied to the contract at the tender stage ensure that the force owns the IPR at the end of the relationship. As above, a site licence(s) should be the outcome if the IPR is not owned by the force.

- iii) **Consultancy Work** – when any of the staff employed by the force undertake consultancy work or software development work inside the force, the IPR resides with the force. When staff carry out work for external customers which results in a report or a definitive piece of software, then the IPR should be claimed by the force. Where possible work should be protected and/or encrypted to prevent exploitation. When other parties do work for (especially when retained on otherwise normal commercial terms) the force, then the IPR resulting from that work should be the property of the force and any counter proposals by the supplier in their conditions of supply should be resisted. The safest way of avoiding these (and other) pitfalls is by using the correct Terms and Conditions of Contract as described at the beginning of this section.

Operational Contract Owners

It is the responsibility of the OCO to ensure that IPR issues within the contract are managed in accordance with the Terms and Conditions throughout the life of the contract.

The Procurement Unit will provide training on contract management to the OCO prior to the contract start date and the management of IPR, if relevant to the agreement, will be addressed within the scope of the training.

The OCO must report any non-compliance issues involving the supplier in respect of IPR to the Head of Supplier Services at the first available opportunity. Legal Services should also be consulted and notified. The Procurement Unit will then manage these issues with the supplier to ensure the terms of the agreement are maintained and adhered to.

Business Marketing

Any business marketing opportunity undertaken by any department may have an IPR content and the department concerned is responsible for identifying and reporting the IPR content to the Procurement Unit.

The responsible officer of the department should inform the Procurement Unit at the first available opportunity to enable the IPR content to be recorded in the IPR Register.

Corporate Communications

If a situation arises where a TV or film production company wishes to represent the force then Corporate Communications should issue them with an Intellectual Property Licence. This allows the production company to use the force logos, uniforms, insignia and vehicle liveries.

There is a fee for issuing such a licence and the level of fee depends on the amount of the police content used and the intended size of the perceived audience and/or distribution of the production.

It is crucial that Corporate Communications Section accurately assess the potential scope of any proposed production to ensure the force obtains the highest level of licence fee possible, prior to agreeing to any agreement with a film or production company. Many TV and film production companies will avoid paying this fee if possible, by portraying generic police officer and vehicles.

Police Officers and Police Staff Copyright

All staff should only copy or use a work protected by copyright with the copyright owner's permission. Copyright applies to any medium. These means that you must not reproduce copyright protected work in another medium without permission. This includes, publishing photographs on the internet, making a sound recording of a book, a painting of a photograph etc.

Copyright allows the force to protect their original material and stops others from using the work without permission. The existence of copyright may be enough on its own to stop others from trying to exploit the material. If it does not, it gives us the right to take legal action to stop them exploiting our copyright and to claim damages.

By understanding and using our copyright and related rights protection, the force can: -

- i) Assign the copyright but retain the moral rights;
- ii) Licence our copyright for use by others but retain ownership;
- iii) Object if our work is distorted or mutilated.

The copyright of all work created by members of **police staff** in the course of their duty or using any force resources belongs to the Chief Constable.

The copyright of work created by **police officers** during the course of their duty or using any force resources belongs to the Crown and is therefore Crown copyright.

If the work has been created by both **police officers** and **police staff** then the copyright is jointly held by the Chief Constable and The Crown.

The Force can still exploit and manage Force created Crown copyright if they have been given a delegation of authority to do so by the Crown.

Although copyright is automatic, it is important that staff assert their copyright in a document so people know who it belongs to. If in doubt, staff should consult with Legal Services.

At the very beginning or at the very end of a document, manual or PowerPoint slide, staff should write, if created by **police staff**:

'This document is the copyright of the Chief Constable of Derbyshire and may not be re-produced in whole or in part without express written permission'.

If created by **police officers**:

'This document is the Crown Copyright, the control of which has been delegated to the Chief Constable of Derbyshire Constabulary by the controller of HMSO and therefore may not be reproduced in whole or in part without the express written permission of the Chief Constable'.

If created jointly by both **police officers** and **police staff**:

'This document is joint copyright of the Crown and the Chief Constable of Derbyshire Constabulary. The control of the Crown copyright in this work has been delegated to the Chief Constable of Derbyshire Constabulary by the Controller of HMSO and therefore this work may not be reproduced in whole or in part without the express written permission of the Chief Constable'.

On all subsequent pages and on any photographs, the following copyright statements should be added (if there is no room on the work to add the above statement, the following should be added as a minimum):

If created by **police staff**:

© *Chief Constable, Derbyshire Constabulary [date work produced]*

If created by **police officers**:

© *Crown Copyright [date work produced]*

If created by **police staff** and **police officers**:

© *Chief Constable, Derbyshire Constabulary and Crown copyright [date work produced]*

Police Officers, Police Staff and Confidentiality

Confidentiality and “know-how” is protected by maintaining the confidentiality of all material assets. Material assets are papers, drawings, images, disks and all forms of electronic records.

All staff must adhere to the Force policy in relation to the Management of Police Information (MOPI) and the marking of all material assets. The correct level of protective marking ensures the restricted circulation, required retention and proper disposal of material assets.

The use of confidentiality agreements and non-disclosure agreements should also be considered in all commercial processes concerning IPR issues.

All staff must consult and seek advice from the Force Information Security Officer to ensure the correct protective marking is applied and whether a confidentiality agreement or non-disclosure agreement needs to be utilised.