



Australian Government Solicitor

DRAFT

**BUREAU OF METEOROLOGY -
INTELLECTUAL PROPERTY MANAGEMENT POLICY**

DECEMBER 2008

CONFIDENTIAL

For internal BoM use only

Note: The IP Policy has been drafted following consultations with key stakeholders within BoM. This draft takes account of the BoM IP Policy developed in 2003, but is essentially a complete revision. The draft is informed by responses to an IP Survey conducted within BoM in August 2008.

Released under FOI

1.5.

1.6.

1.7.

1.8. Whilst this provision 'establishes' BoM, it is significant that the legislation does not say BoM is a body corporate, with the capacity to own property, enter into contracts, sue and be sued in its corporate name, etc. This means that:

- when BoM acquires IP it is the Commonwealth, technically, which owns that IP;
- when BoM enters into a contract - including a contract in which IP is vested in one or other party and/or is licensed by the owning party to the other - it the Commonwealth who contracts;
- if BoM sues or is sued, it is the Commonwealth which, legally speaking, is the party to the litigation.

1.9. The Commonwealth, as represented by BoM, owns IP in any material created by a BoM employee in the course of their employment. No special terms of employment need be stipulated (unless it is desired to vary that position). In relation to consultants, it is necessary that the contract for services stipulate that IP in any material created under it will vest in BoM.

1.10.

1.11.

1.12.

1.13.

1.14.

Released under FOI

3.20.

3.21.

3.22.

3.23.

3.24.

Ownership of material developed 'in the course of employment'

3.25. Most BoM staff are employees engaged on a contract of service. Any IP developed by such a staff member in the course of their employment will vest in BoM²⁸.

²⁸ . . . or as it may have arranged in its agreements with clients or other third parties.

- 3.26. Questions may arise from time to time about whether particular material was in fact developed by a BoM employee *'in the course of their employment'*. In case of doubt it is wise for the employee to raise the matter with their supervisor. Failure to do so may raise an adverse inference, since it would be assumed that the employee would not place themselves in a conflict of interest by acquiring private rights to IP that might otherwise be claimed by BoM.

Study

- 3.27. Where the employee undertakes study in their area of professional interest, they would generally own IP in any materials created by them for purposes of such study. As a condition of access to BoM information and resources and the provision of study leave, BoM may justifiably seek a licence to enable it to use a thesis or other material developed by the student.

3.28.

Academic writing and presentations

- 3.29. BoM supports its personnel in appropriate cases to build their profile and become known in the market and industry as experts. It encourages its people to contribute to academic discussions on relevant scientific matters by writing articles or preparing legal information for inclusion in BoM publications or external professional journals, and by presenting papers in scientific forums. BoM believes that these undertakings are an important part of personnel development; and a proper reflection of the employee's 'moral rights'³⁰. They are also a significant way in which BoM markets its skills and expertise to stakeholders, users, collaborating organisations and the public.

- 3.30. However these objectives are moderated by practical concerns of several kinds:

- *resources*: time committed to these activities may impact upon the performance of the employee's ordinary duties;
- *confidentiality*: there is a risk that a BoM employee may divulge material which comprises BoM confidential information;
- *copyright*: issues may arise as to ownership of the paper, and authorisation to use any BoM copyright material that is incorporated in it;
- *branding / attribution*: a question arises whether it is likely, and appropriate, that the author be identified as a BoM employee, and whether any views expressed are to be attributed to BoM;
- *public relations*: views expressed may be taken incorrectly as expressing views of BoM or the government, or may undermine government policy or practice;

³⁰ See discussion on moral rights at para.3.33.

- *conflict of interest*: the employee's primary obligation is to BoM, and thus they should give consideration to whether the article or presentation should be featured in a BoM publication or forum (in addition or instead of externally).

3.31. For these reasons, personnel should consult with their team leader on any proposal to submit a legal article to a professional journal or to present a paper at a professional forum. The BoM employee and team leader must then agree on:

- the manner of citing their employment and/or position within BoM (if at all);
- whether the views are to be presented as the author's personal views, or the views of BoM;
- whether copyright belongs to the employee (or as they may arrange with the external entity) or BoM³¹.

3.32.

Moral rights of BoM staff and others

3.33. Moral Rights provided under the *Copyright Act 1968* include:

- the right of attribution (of authorship);
- the right to object to distortion of the author's work that is prejudicial to their honour or reputation (the right of integrity); and
- the right not to have authorship falsely represented.

3.34. Ownership of IP in material developed by BoM employees and contract staff (which generally vests in BoM) is quite distinct from 'moral rights' in such material (which are enjoyed by the employee). Moral rights are a personal right of the (human) author of a work, and are not capable of being assigned or treated as property in the same way as other forms of IP. BoM employees enjoy moral rights in their creations, even though the copyright vests in BoM. Similarly, the authors of material provided to BoM by a supplier, licensor or collaborating organisation enjoy moral rights which are quite distinct from the 'economic rights' of copyright proprietors.

3.35. In general, acts which may infringe moral rights of an author may be defended on the following grounds:

- the act (or omission) was *reasonable*, having regard to industry practice and all relevant circumstances;

³¹ That is, whether the work is to be regarded as having been prepared in the course of employment.

— the author has given *consent* to the act (or omission). It should be noted that, in general, such consents must be confined in their application to *specific* materials and *specific* actions (or omissions).

3.36. By comparison with other areas of copyright law, moral rights entail far more subjective judgments. These include whether, in the circumstances, the attribution or non-attribution of the author is *reasonable*, and whether a particular treatment of their work is *prejudicial to the author's reputation*.

3.37. BoM staff who re-use material created by others should be sensitive to the likely attitude of the author to attribution and the integrity of their work. A plausible circumstance which may arise is where BoM re-uses material taken from a scientific publication. The safer course is to attribute the earlier work unless there is a specific reason not to, or the original author has consented to non-attribution. It is irrelevant whether the original author was or remains in BoM or is external to BoM.

3.38. The Bureau will not, at this stage, request its employees sign any waiver of moral rights as a blanket policy. This is pursuant to the view of the Australian Government Solicitor's Office that the defence of reasonableness in the *Copyright Act 1968* would apply to many ordinary uses of copyright produced by or under the control of an agency. The defence should apply to most of BoM's technical work and standard outputs, avoiding the need to obtain a waiver. On the other hand, a seminar paper delivered to a scientific forum and published by BoM should ordinarily credit specific employees as author; this consent should be obtained where it is proposed to omit or change the attribution in later publications of the material in the same or altered form.

3.39.

3.40.

3.41.

3.42.

Released under FOI

Released under FOI