



# Crown Use of Intellectual Property

## Crown use of intellectual property

This fact sheet provides information on 'Crown use' provisions for patents, designs and copyright. 'Crown use' relates to government-authorized use of intellectual property rights without the authorisation of the rights owner.

This fact sheet sets out your rights under the 'Crown use' provisions of the *Patents Act 1990*, the *Designs Act 2003* and the *Copyright Act 1968*, including what you can do if you think the government is using your intellectual property without your permission.

## Crown use of patents and designs

'Crown use' of patents and designs is regulated by the *Patents Act 1990* and the *Designs Act 2003*. Any use of a patent or a design by the government must comply with this legislation.

## What is 'Crown use'?

The 'Crown use' provisions of the Patents Act and the Designs Act permit certain government bodies, and others authorised by government, to use a patented invention or a registered design for certain purposes.

The government does not need to negotiate with you or obtain your permission before using your patent or your design under the 'Crown use' provisions.

## Why is the government able to use my patent or design without my permission?

Patent and design rights grant monopolies to the patent and design owners. The 'Crown use'

provisions ensure that governments in Australia can balance the grant of those exclusive rights with the needs of the Australian public.

The government is able to use patents and designs without the permission of the patent or design owner so long as the use is for the services of the Commonwealth, a State or a Territory. This includes

- use of a patent or a design for the proper provision of government services within Australia; and
- supply of products by the Commonwealth government to a foreign country under an agreement to supply products required for the defence of that country.

## Who can make use of the 'Crown use' provisions?

A range of government entities may be able to make use of the 'Crown use' provisions. These are:

- Commonwealth, State or Territory departments and agencies;
- authorities of the Commonwealth, the States and the Territories; and
- local governments.

However, not every government authority is able to make use of the 'Crown use' provisions. Whether a particular authority is part of 'the Crown' needs to be determined on a case by case basis.

The government may also provide written authorisation for other people to use your patent or design, for example, contractors who are engaged to carry on work for the government. Agreements or licences of this nature must be





approved by either the relevant State or Territory Attorney-General or Commonwealth Minister.

## What are my rights under the 'Crown use' provisions?

*You are entitled to be informed of the government's use of your patent or design*

If the government is using your patent or design under the 'Crown use' provisions, you are entitled to be informed of that use. The government must inform you as soon as practicable after it has used your patent or your design.

You are also entitled to require the government to provide you with information about the use from time to time, as long as:

- your requirements are reasonable; and
- the government does not believe that giving you that information would be contrary to the public interest.

*You are entitled to negotiate terms and remuneration for the 'Crown use'*

If the government is using your patent or design, you are entitled to negotiate with the government and agree to the terms for the use and the remuneration payable to you. Alternatively, you may agree to a method for determining the terms of the use and remuneration with the government.

If you are unable to reach an agreement, you are entitled to apply to the court for a determination of the terms of the use and the remuneration payable to you.

*You are entitled to seek a declaration that your patent or design has been used by the government*

If you think the government has used your patent or design, you are entitled to apply to the court for a declaration to that effect.

However, you should be aware that, if the government thinks that your patent or design is invalid, it is entitled to apply to the court for an order seeking revocation of your patent or design. If that happened, you would have an opportunity to defend your patent or design against revocation.

*A court can order the government to cease its use of your patent or design*

You are entitled to commence an action in the court for a declaration that the government is to cease using your patent or design.

The court will be able to make this declaration if it is satisfied that:

- the use of your patent or design is not necessary for the proper provision of services of the Commonwealth, a State or a Territory; and
- it is fair and reasonable to make this declaration.

However, the court would only make this declaration if it is satisfied that the legitimate interests of the Commonwealth, a State or a Territory will not be adversely affected by the declaration.





If the court makes this declaration, the government will be required to stop using your patent or design.

### What court can I apply to?

You can apply to the Federal Court of Australia or a State or Territory Supreme Court.

### What are the obligations and rights of the government under the 'Crown use' provisions?

The government has the following obligations under the 'Crown use' provisions:

- The government must inform you of its use of your patent or design as soon as practicable after that use.
- The government must give you other information concerning the use of your patent or your design that you reasonably require, unless it considers this to be contrary to the public interest.
- The government must remunerate you for its use of your patent or design. The remuneration obligation under the legislation is not contingent on whether or not the government use is for profit.

The government has the following rights under the 'Crown use' provisions:

- The government may use your patent or a design without your permission for the services of the Commonwealth or of a State or Territory. That use will not constitute an infringement of your patent or design.
- The government may sell products produced under the 'Crown use' provisions in some situations.

### Crown use of copyright

The *Copyright Act 1968* provides for Crown use of copyright material (eg, literary and artistic works, films, music).

The Commonwealth, State and Territory governments, as well as any person authorised in writing by those governments, are able to use copyright material for the services of the Commonwealth, State and Territory.

- The government is required to notify the copyright owner of the 'Crown use' as soon as possible after that use, unless that would be contrary to the public interest.
- The government is required to give the copyright owner information about the use that the owner requires.
- The government and the copyright owner may agree to terms, including potential remuneration for the use. If they cannot agree, the Copyright Tribunal of Australia has jurisdiction to set terms.

In addition to the general Crown use provisions, there are also government statutory licence schemes. These allow government agencies to pay declared collecting societies (Copyright Agency Ltd for literary works and Screenrights for broadcasts) for multiple copies of material made for the services of the Government.

For more information on Crown use of copyrighted materials, you should contact the Commonwealth Attorney-General's Department.





## Seek professional advice

This sheet provides only basic information. Intellectual property matters can involve complex legal issues and it may be in your best interests to consult a patent attorney, solicitor experienced in intellectual property matters, or your business adviser.

For a list of IP professionals, visit the IP Australia website [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) or search your local Yellow Pages Directory.

Other information on patents and designs matters is available from [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au). Other information on copyright matters is available from [www.ag.gov.au/copyright](http://www.ag.gov.au/copyright).

### Disclaimer:

This information is intended to help the reader gain a basic understanding of some IP principles. It is not designed to provide legal, business or other relevant professional advice.

IP Australia recommends that you seek independent legal, business or other relevant specialist advice.

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